

No. 14389

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United States  
Court of Appeals  
for the Ninth Circuit

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TRIPLE "A" MACHINE SHOP, INC., a Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.

FILED

JAN 11 1955



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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San Francisco, Calif.,

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In the Southern Division of the United States District Court, for the Northern District of California

No. 26198 In Admiralty

TRIPLE "A" MACHINE SHOP, INC., a Corporation,

Libelant,

vs.

UNITED STATES OF AMERICA,

Libelee.

### LIBEL

Now comes Triple "A" Machine Shop, Inc., libelant above named and, complaining against libelee above named, respectfully alleges as follows:

#### I.

That at all times herein mentioned, libelant has been and now is a corporation, organized and existing under the laws of the State of California and having its principal place of business in the City and County of San Francisco.

#### II.

That at all times herein mentioned, libelee, United States of America, was the owner or apparent owner of five (5) certain lifeboats.

#### III.

That at all times herein mentioned, Military Sea Transportation Service, Pacific, was an agency of

the Department of the Navy of the United States of America; that at all of said times said libelee acted by and through said Military Sea Transportation Service, Pacific, in the ownership, maintenance and repair of said lifeboats.

#### IV.

That on or about the 2nd day of October, 1950, said libelee, by and through said Military Sea Transportation Service, Pacific, employed libelant to make certain repairs on said lifeboats for which said libelee agreed in writing to pay the sum of Three Thousand Seven Hundred Seventy-five (\$3,775.00) Dollars; that a copy of said writing is attached hereto, made a part hereof and marked "Exhibit A."

#### V.

That libelant completed the said work referred to in Exhibit "A" on or about the 25th day of November, 1950, in strict accordance with the terms and provisions thereof; that said agreed price of \$3,775.00 became due on said 25th day of November, 1950; that although often demanded, this libelee has wholly failed and refused to pay said sum, or any part thereof, and that the whole of said sum together with interest thereon is now due, owing, and unpaid.

Wherefore, libelant prays judgment as hereinafter set forth.

As a Further and Second Claim Against Said Libelee, Libelant Alleges:



I.

Realleges all of Paragraphs I to IV, inclusive, of the first cause of libel hereinabove set forth and incorporates the same herein.

II.

That on or about the 15th day of October, 1950, libelee employed libelant to do certain extra work on the repair of said lifeboats, which said work was in addition to the work covered by said Exhibit "A." That said libelee agreed to pay therefor a sum equal to the reasonable value of the labor and materials used in said extra work. That said extra work was completed on or about the 15th day of November, 1950. That thereafter, to wit, on or about the 27th day of November, 1950, libelee gave libelant a statement in writing fixing the reasonable value of said extra work at Nine Thousand Four Hundred Ninety (\$9,490.00) Dollars and agreeing to pay libelant said sum. That a copy of said writing is annexed hereto, made a part hereof, marked "Exhibit B."

III.

That although often demanded by libelant, libelee has wholly failed and refused to pay said sum, or any part thereof, and that the whole of said sum, together with interest thereon, is now due, owing, and unpaid.

Wherefore, libelant prays judgment as herein-after set forth.

As a Further and Third Claim Against Said Libelee, Libelant Alleges:

## I.

Realleges all of Paragraphs I to IV, inclusive, of the first cause of libel hereinabove set forth and incorporates the same herein.

## II.

That during the months of October and November, 1950, libelee directed and required libelant to furnish labor and materials necessary to effect certain additional repairs on said lifeboats, which said extra work was in addition to and was not covered by said Exhibit "A" or Exhibit "B" herein.

## III.

That said last mentioned extra work was completed on or about the 25th day of November, 1950, and was and now is of the reasonable value of Six Thousand Three Hundred Forty-two (\$6,342.00) Dollars. That although often demanded by libelant, libelee has failed and refused to pay said sum, or any part thereof, and the whole of said sum, together with interest thereon, is now due, owing and unpaid.

Wherefore, libelant prays judgment against libelee in the sum of Nineteen Thousand Six Hundred Seven (\$19,607.00) Dollars, together with interest thereon, court costs, and such other relief as may be proper.

/s/ J. THADDEUS CLINE,  
Attorney for Libelant.

EXHIBIT A

Military Sea Transportation Service, Pacific  
33 Berry Street  
San Francisco 7, California

To: Triple "A" Machine Shop, Inc.,  
Pier 64,  
San Francisco 7, California.

Date: 2 October, 1950.

Job Order No. 10.

Contract No. MST 235,  
Repair to Lifeboats.

This Job Order issued pursuant to the provisions of the above-numbered contract, the terms of which by this reference are made a part hereof, Witnesseth That:

1. Work: The Contractor shall furnish the supplies and services required to perform the work described in the attached plans and specifications made a part hereof and designated as follows: Repairs to Five (5) Lifeboats, Specification No. MSTSP 51-64.

2. Price: The Government will pay the Contractor for the performance of this Job Order the following listed sum plus an amount at the unit prices on the reverse side hereof for the units

specified and furnished under Article 3 (c) of the above-numbered contract: \$3,775.00.

3. Commencement and Completion dates: The work will be performed at Contractor's plant.

Contractor shall commence work on: 2 October, 1950.

Work shall be completed on or before: 11:00 a.m., 27 October, 1950.

4. Liquidated Damages: Pursuant to the Article of the said contract entitled "default," the damages payable for each calendar day of delay shall be \$100.00.

5. Appropriation Chargeable: The Work is chargeable to the following appropriation, title and account:

1711990.01 24302  
079 52900 62383

Payment to the Contractor will be made by the Government through the Navy Regional Accounts Office at Oakland, California.

6. This Job Order is issued pursuant to the authority of the Armed Services Procurement Act of 1947, Section 3.

THE UNITED STATES OF  
AMERICA,

By /s/ J. K. McCUE,

Captain, USN Contracting  
Officer.

Accepted:

Date October 11, 1950.

TRIPLE "A" MACHINE  
SHOP, INC.,  
(Contractor).

By A. ENGEL,  
President.

Dp

EXHIBIT B

Military Sea Transportation Service, Pacific  
33 Berry Street  
San Francisco 7, California

To: Triple "A" Machine Shop, Inc.,  
Pier 64  
San Francisco 7, California.

Date: 27 November, 1950.

Change Order "A" to Job Order No. 10.

Contract No. MST 235,  
Repair to Lifeboats.

This Change Order issued pursuant to the provisions of the above-numbered job order and contract,  
Witnesseth That:

1. Work: The Contractor shall make changes in the job order in accordance with the work described in the attached specifications made a part

hereof and designated as follows: Addition No. 1 to Specification No. MSTSP 51-64.

2. Price: The job order price is, in accordance with Article 6 of the above-numbered contract, hereby adjusted by the increased sum of: \$9,490.00.

By reason of this Change Order, the total price of all work under the job order is hereby changed to: \$13,265.00.

3. Completion Date: As a result of the work set forth herein, the completion date of the work under the job order is hereby extended to: 17 November, 1950.

4. Appropriation: The work set forth herein is applicable to the following appropriation, title and account: 1711990.01 24302

079 52900 62383

5. Except as hereby and heretofore amended, all the terms and conditions of the contract and job order remain in full force and effect.

THE UNITED STATES OF  
AMERICA,

By /s/ J. K. McCUE,  
Captain, USN Contracting  
Officer.

Accepted:

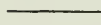
Date Jan. 15, 1951.

TRIPLE "A" MACHINE  
SHOP, INC.,  
(Contractor).

By .....

EB

[Endorsed]: Filed October 1, 1952.



[Title of District Court and Cause.]

ANSWER

Comes now the United States of America, respondent above named, and for answer to the libel herein denies, admits, and alleges as follows:

I.

Answering unto Article I of said libel respondent has no knowledge or information sufficient to answer said allegations, and upon that ground denies the same.

II.

Answering Article II of said libel, respondent admits the allegations thereof.

III.

Answering Article III of said libel, respondent admits the allegations thereof.

## IV.

Answering Article IV of said libel, respondent admits the allegations thereof.

## V.

Answering Article V of said libel, respondent denies the allegations thereof, and alleges that "the contract" referred to in Article IV of the libel incorporates all of the provisions of and terms of the agreement entered into as between libelant and respondent; further answering said Article V, respondent alleges that said sum of \$3,775.00 has been paid in full by respondent to libelant.

Answering Unto the Alleged, Further and Second Claim of Libelant, Respondent Denies, Admits and Alleges as Follows:

## I.

Answering Article I of said Second Cause of Action or Libel, respondent refers to, and by such reference incorporates herein as if set forth at length, all of the denials, admissions and allegations contained in its answer to Articles I, II, III, IV, and V of its answer to libelant's First Cause of Action or Libel hereinabove set forth.

## II.

Answering unto Article II of said Second Cause of Action or Libel, respondent alleges that on October 15, 1950, respondent and libelant entered into a certain agreement, copy of which is attached to the Libel marked Exhibit "B," pursuant to a Master



Contract hereto attached, marked respondent's Exhibit "A"; and that the work provided therein to be performed by libelant was performed and completed on or about the 15th day of November, 1950. That the value of the work so performed and the payment therefor is provided for in that certain agreement attached to the Libel marked Exhibit "B." Except as otherwise herein admitted or denied, respondent denies each and every, all and singular, the allegations of said Article II.

### III.

Answering Article III of said Second Cause of Action or Libel, respondent denies the allegations thereof. Further answering said Article III, respondent alleges that said sum of \$9,490.00 has been paid in full by respondent to libelant.

Answering Unto the Alleged, Further and Third Claim of Libelant, Respondent Denies, Admits and Alleges as Follows:

#### I.

Answering Article I of said Third Cause of Action or Libel, respondent refers to, and by such reference incorporates herein as if set forth at length, all of the denials, admissions and allegations contained in its answer to Articles I, II, III, IV and V of its answer to libelant's First Cause of Action or Libel hereinabove set forth.

#### II.

Answering Article II of said Third Cause of Action or Libel, respondent alleges that all of the

work provided or agreed to be performed by libelant is set forth in said Exhibits "A" and "B" attached to the Libel, issued pursuantly to Master Contract, hereto attached marked respondent's Exhibit "A," and not otherwise or at all. Except as herein admitted respondent denies each and every, all and singular, the allegations of said Article II.

### III.

Answering Article III of said Third Cause of Action or Libel, respondent denies the allegations thereof.

For a First, Separate, and Affirmative Defense  
Respondent United States of America Alleges:

#### I.

That this Court does not have jurisdiction of the alleged causes of action set forth in the libel under the provisions either of the Public Vessels Act (46 U. S. C. 781, et seq.) or the Suits in Admiralty Act (46 U. S. C. 741, et seq.), in that the action is based upon contract, which cause of action, if any, is under the exclusive jurisdiction of the Court of Claims.

For a Second, Separate and Affirmative Defense,  
Respondent United States of America Alleges:

#### I.

That on the 10th day of February, 1950, the respondent United States of America, through its agency, the Military Sea Transportation Service, en-

tered into a "Master Contract for Repair and Alteration of Vessels," Contract No. MST-235, with the libellant; a true and correct copy of the said contract is attached hereto, marked Exhibit "A," and is incorporated into and made a part of this answer. Among other provisions, the aforesaid contract provided as follows:

"(j) The Government does not guarantee the correctness of the dimensions, sizes and shapes set forth in any job order, sketches, drawings, plans or specifications prepared or furnished by the Government, except when a job order requires that the work be commenced by the Contractor prior to any opportunity inspect the vessel. The Contractor shall be responsible for the correctness of the shape, sizes and dimensions of parts to be furnished hereunder except as above set forth and other than those furnished by the Government. Any questions regarding or arising out of the interpretation of plans or specifications hereunder or any inconsistency between plans and specifications shall be determined by the Contracting Officer subject to appeal by the Contractor to Commander, Military Sea Transportation Service, or his duly authorized representative who shall not be the Contracting Officer. Pending final decision with respect to any such appeal, the Contractor shall proceed diligently with the performance of the work, as determined by the Contracting Officer. If it is determined that the

interpretation of the Contracting Officer is not correct, an equitable adjustment in the job order price shall be made. Any conflict between this contract and any job order, including any plans and specifications, shall be governed by the provisions of this contract."

## II.

That on or about the 2nd day of October, 1950, the respondent United States of America, through its agency, the Military Sea Transportation Service, issued a "Job Order No. 10," pursuant to the provisions of the "Master Contract" hereinabove referred to. A true and correct copy of said "Job Order" is attached hereto, marked Exhibit "B," and is incorporated into and made a part of this answer, by the terms of which the libelant was em-hereto attached, marked Exhibit "C," and by reference made a part hereof. Among the provisions, aforesaid lifeboats were prepared by the respondent and were attached to and made a part of said "Job Order No. 10." A copy of said "Specifications" is hereto attached, marked Exhibit "C," and by reference made a part hereof. Among the provisions, the "Specifications" provided as follows:

"It is the intent of these specifications to provide for the complete repair and reconditioning, both mechanically and structurally, of five (5) lifeboats, all as necessary to place the boats in first class operating condition and ready for use.

"The work shall include, but shall not be

VII.

Invitation to bid No. P51-36 "Lifeboats," dated September 21, 1950, issued by Military Sea Transportation Service, Pacific, together with enclosures, photostatic copy of which is attached hereto and marked Exhibit "G."

VIII.

Bid dated September 29, 1950, submitted by Triple "A" Machine Shop to Military Sea Transportation Service, Pacific, photostatic copy of which is attached hereto and marked Exhibit "H."

IX.

Letter from Military Sea Transportation Service, Pacific, to Triple "A" Machine Shop, dated June 16, 1952, copy of which is attached hereto and marked Exhibit "I."

X.

Letter from Captain J. K. McCue, United States Navy, Contracting Officer, Military Sea Transportation Service, Pacific, to Mr. J. Thaddeus Cline, dated 2 November, 1952, copy of which is attached hereto and marked Exhibit "J."

XI.

Letter from Mr. J. Thaddeus Cline to Military Sea Transportation Service, Pacific, dated 28 June, 1951, copy of which is attached hereto and marked Exhibit "K."

XII.

Letter from Captain J. K. McCue, United States Navy, Contracting Officer, to Triple "A" Machine

Shop, dated October 16, 1950, copy of which is attached hereto and marked Exhibit "L."

Request Is Further Made for the Admission of the Following Facts Within Ten (10) Days of Service Hereof:

XIII.

That from October 10, 1950, to and including October 1, 1952, Mr. J. Thaddeus Cline was the duly appointed and acting attorney in fact for Triple "A" Machine Shop, Inc.

XIV.

That Mr. A. Engel, President, Triple "A" Machine Shop, Inc., was duly authorized to act for the libelant in connection with the signing of the Master Contract for Repair and Alteration of Vessels, copy of which is attached to the respondent's Answer and marked Exhibit "A."

XV.

That Mr. A. Engel was duly authorized on behalf of libelant to sign the "Job Orders" and "Specifications," photostatic copies of which are attached to the respondent's Answer and marked Exhibits "B" and "C."

XVI.

That Mr. A. Engel was duly authorized on behalf of the libelant to sign the bid, photostatic copy of which is attached hereto and marked Exhibit "H."

XVII.

That Mr. A. Engel was duly authorized to act for

the respondents in connection with receiving and acceptance of the invitation to bid, photostatic copy of which is attached hereto and marked Exhibit "G."

XVIII.

That Mr. A. Engel was duly authorized to act for the libelant in connection with the writing of the letter, copy of which is attached hereto and marked Exhibit "E."

XIX.

That respondent has paid to the libelant, and the libelant has received from the respondent, the sum of \$13,265.00 paid for as set forth in Government check No. 15,141, photostatic copy of which is attached hereto and marked Exhibit "F."

XX.

That "Mr. Blake" referred to in the letter from Military Sea Transportation Service, Pacific, to Triple "A" Machine Shop, Inc., dated June 16, 1952, copy of which is attached hereto and marked Exhibit "I," was duly authorized to act for and on behalf of the libelant.

XXI.

That libelant, through its representative "Mr. Blake," referred to in the letter from Military Sea Transportation Service, Pacific, to Triple "A" Machine Shop, Inc., dated June 16, 1952, copy of which is attached hereto and marked Exhibit "I," was afforded a hearing on June 6, 1952, before the Contract Advisory Board, Military Sea Transportation Service, Pacific, in connection with the claim of

Triple "A" Machine Shop, Inc., alleged in the libel.

## XXII.

That, Commander, Military Sea Transportation Service, Washington, D. C., made a final determination as to the said claim of Triple "A" Machine Shop, and by such decision, rejected libelant's contention that the work performed by libelant was "extra work" and further decided and determined that such work was within the scope of work contemplated by "Job Order No. 10" and the "Specifications," copies of which are attached hereto as Exhibits "B" and "C."

## XXIII.

That, Commander, Military Sea Transportation Service, Washington, D. C., by such decision, rejected and denied libelant's claim for extra compensation, for which claim is asserted by libelant in its third cause of action or claim in the libel filed herein.

Dated: March 4, 1953.

/s/ CHAUNCEY TRAMUTOLO,  
United States Attorney;

/s/ KEITH R. FERGUSON,  
Special Assistant to the At-  
torney General;

/s/ RICHARD J. HOGAN,  
Special Assistant to the U. S.  
Attorney.



limited to, any detailed specifications which follows:

\* \* \*

“All work shall be subject to inspection and approval by the U. S. Coast Guard and the U. S. Navy Inspector assigned.”

That the libelant accepted and entered upon performance of the work prescribed by “Job Order No. 10” and in accordance with the aforesaid “Specifications.” That prior to completion of the said repairs to the said lifeboats, an inspection was made thereof by the United States Coast Guard and various additional repairs were found to be necessary in order to meet the requirements of the Coast Guard inspectors; such additional repairs were made by the libelant in accordance with the “Master Ship Repair Contract,” “Job Order No. 10” and the “Specifications for Repairs” aforesaid; that the aforesaid additional items of repair work performed by the libelant were accomplished and performed solely in conformance with the terms and conditions of the aforementioned “Master Ship Repair Contract,” “Job Order No. 10” and the “Specifications.”

### III.

That pursuant to Article 5, Section (j) of the aforesaid “Master Ship Repair Contract,” the libelant was afforded, on June 6, 1952, a hearing before the Contract Advisory Board, Military Sea Transportation Service, Pacific, for the purpose of determining the merits of the issue raised by the libelant, to the effect that “Job Order No. 10” and the

"Specifications for Repairs" did not require or contemplate by their respective terms that the said "additional repairs," referred to in Articles I and II of libelant's Third Cause of Action, were to be made by the libelant without compensation other than such compensation as is provided for in "Job Order No. 10." That the Contract Advisory Board of Military Sea Transportation Service-Pacific, determined, after due deliberation, that the libelant was not entitled to additional compensation for the additional work performed on the said lifeboats, it being determined by the said Contract Advisory Board that the "Specifications" covered in full any and all work which would be required to fully repair the said lifeboats, and the libelant was so advised of the aforesaid determination of the Contract Advisory Board on June 16, 1952. That the Contract Advisory Board acted in accordance with Article 5, Section (j) of the "Master Ship Repair Contract" as the duly authorized representative of Commander, Military Sea Transportation Service. That the decision of Commander, Military Sea Transportation Service, was final and conclusive as to the disputed issue of entitlement of the libelant to additional compensation or reimbursement for additional work performed to complete repairs to the said lifeboats.

Wherefore, respondent prays that the libel herein be dismissed with its costs incurred.

/s/ CHAUNCEY TRAMUTOLO,  
United States Attorney,

/s/ KEITH R. FERGUSON,  
Special Assistant to the  
Attorney General;

/s/ RICHARD J. HOGAN, JR.,  
Special Assistant to the U. S. Attorney, Proctors  
for Respondent, United States of America.

[Exhibits A, B, and C referred to in the above Answer have been set out as Pre-trial Exhibits and are printed at Pages 25 to 45.]

[Endorsed]: Filed January 7, 1953.

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[Title of District Court and Cause.]

REQUEST FOR ADMISSION OF FACTS AND  
GENUINENESS OF DOCUMENTS UNDER  
RULE 32B, SUPREME COURT ADMI-  
RALTY RULES

To: Triple "A" Machine Shop, Inc., Plaintiff  
above named, and to J. Thaddeus Cline, its At-  
torney:

Please take notice that the respondent hereby re-  
quests the libelant, pursuant to Rule 32B of the  
Supreme Court Admiralty Rules, to admit within  
ten (10) days after service of this request, the  
genuineness of the following documents:

I.

Contract No. MST 235, designated as "Master  
Contract for Repair and Alteration of Vessels," be-  
tween United States of America and Triple "A"  
Machine Shop, Inc., dated February 10, 1950, mime-

ographed copy of which is attached to the Answer of the United States in the above-entitled cause and marked Exhibit "A."

## II.

Job Order No. 10, Contract No. MST 235, entitled "Repair to Lifeboats," dated October 2, 1950, photostatic copy of which is attached to the Answer of the United States in the above-entitled cause and marked Exhibit "B."

## III.

Specification No. MSTs P 51-64 "Specifications for Repairs to Five Lifeboats," dated September 20, 1950, photostatic copy of which is attached to the Answer of the United States in the above-entitled cause and marked Exhibits "B" and "C."

## IV.

Public Voucher No. 49497 dated January 31, 1951, in the amount of \$13,265.00, photostatic copy of which is attached hereto and marked Exhibit "D."

## V.

Letter from Triple "A" Machine Shop to Military Sea Transportation Service, Pacific, dated January 16, 1951, copy of which is attached hereto and marked Exhibit "E."

## VI.

U. S. Treasury check No. 15,151 in the amount of \$13,265.00, payable to Bank of America, Columbus Branch, assignee for Triple "A" Machine Shop, photostatic copy of which is attached hereto and marked Exhibit "F."

EXHIBIT A

(Joint Exhibit No. 1)

(Copy)

Contract No MST 235

Date Feb. 10, 1950

Department of the Navy  
(Military Sea Transportation Service)

Master Contract

for

Repair and Alteration of Vessels

Between

United States of America

and

Triple "A" Machine, Shop, Inc.

San Francisco, Calif.

A True Copy:

/s/ E. S. CARMICK,  
Captain, USN.

Conformed Copy

Now Therefore, the parties hereto do mutually agree as follows:

### Article 1. Purpose

The purpose of this contract is to establish the terms upon which the Contractor will effect repairs, completions, alterations of and additions to vessels of the Government under job orders issued by the Contracting Officer from time to time under this contract.

### Article 2. Preliminary Arrangements

(a) Whenever the Government shall invite the Contractor to submit a bid or quotation for the repair, completion, alteration of or addition to a vessel, the Contracting Officer shall notify the Contractor of (i) the nature of the work to be performed, (ii) the location where the work is to be performed, and (iii) the date the vessel will be available to the Contractor and the date the work is to be completed. Unless the notice otherwise states, bids shall be submitted on the basis that the work will be performed at the Contractor's plant. Upon receipt of such notification, the Contractor shall promptly advise the Contracting Officer whether or not the Contractor is willing and able to perform the work.

(b) In the event the Contractor is willing and able to perform the work, the Contractor and the Contracting Officer, either before or after the arrival of the vessel at the location where the work is to be

performed, shall inspect the items of work to be accomplished on such vessel, and the Contractor shall as soon as practicable thereafter, as requested by the Contracting Officer, submit a bid or negotiate for the performance of the work. If the Contracting Officer requests the Contractor to negotiate, it shall, as promptly as possible, after inspection of the work, quote a price for which it will perform the work in accordance with plans and specifications furnished or to be furnished by the Government and will submit therewith a breakdown in such detail as the Contracting Officer may reasonably request of the estimated cost of performing such work, but in any case indicating the estimated cost of (i) direct labor, (ii) material, (iii) overhead and (iv) any amount included for contingencies and profit. If the Contracting Officer requests the Contractor to submit a bid, it shall as promptly as possible after inspection of the work submit a bid for the performance of the work in accordance with plans and specifications furnished or to be furnished by the Government.

### Article 3. Job Orders and Compensation

(a) If on receipt of the Contractor's bid or quotation and any other bids or quotations which the Contracting Officer may obtain, the Contracting Officer determines that the work should be awarded to the Contractor, the price for the work shall be set forth in a job order, and such job order shall be signed and issued by the Contracting Officer, and signed and acknowledged by a duly authorized

officer or other representative of the Contractor. Such job order shall be substantially in the form attached hereto as Exhibit A and shall be deemed to incorporate the terms and provisions of this contract.

\* \* \*

#### Article 4. Performance

(a) Upon the issuance of a job order, the Contractor shall promptly commence the work specified therein and in any plans and specifications made a part thereof, and shall diligently prosecute the work to completion to the satisfaction of the Contracting Officer. The Contractor shall not commence work until the job order has been issued, except in the case of emergency work requested by the Contracting Officer as provided in paragraph (b) of Article 3.

(b) The Government shall deliver the vessel described in the job order to such location as may be specified in the job order for the performance of the work, and upon completion of the work the Government shall accept delivery of the vessel at such location. If the Government shall require the Contractor to move the vessel after delivery to the Contractor, a change order under Article 6 shall be issued. All other changes in location of the vessel during the performance of the work shall be at the expense of the Contractor.

(c) The Contractor shall, without charge and without specific requirement therefor in a job order:



(i) Make available existing washroom and similar facilities at the Plant to personnel of the vessel while in drydock or on a marine railway, and supply and maintain in a condition satisfactory to the Contracting Officer suitable brows and gangways from drydock or marine railway to the vessel;

(ii) Store salvage, scrap or other ship's material of the Government as may be specified by the Contracting Officer in the Plant for a period not exceeding 60 days from the completion of the work to be accomplished under the job order and

(iii) Perform, or pay the cost of, any repairing, reconditioning, or replacing rendered necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including winches, pumps, rigging, or pipe lines (any such use to be at the Contractor's own risk).

(d) The Contractor shall furnish all necessary material, labor, services, equipment, supplies, power, accessories, facilities, and such other things as are necessary for accomplishing the work specified in the job order subject to the right reserved in the Government under Article 5 (i).

(e) Dock and sea trials of the vessel when required by the Government shall be specified in the job order. During the conduct of such trials the vessel shall be under the control of the vessel's commander and crew with representatives of the Contractor and the Government on board to determine whether or not the work done by the Contractor has

been satisfactorily performed. Dock and sea trials not specified by the job order which the Contractor requires for his own benefit shall not be undertaken by the Contractor without prior notice to and approval of the Contracting Officer, and all such trials shall be conducted at the risk and expense of the Contractor.

(f) The Contractor shall provide and install all fittings and appliances which may be necessary for the dock and sea trials to enable the representatives of the Government to determine whether the requirements of the job order, plans and specifications have been met, and the Contractor shall be responsible for the care, installation and removal of instruments and apparatus furnished by the Government for such trials.

#### Article 5. Inspection and Manner of Doing Work

(a) Work shall be performed hereunder in accordance with the job order, and any plans and specifications made a part thereof, as modified by any change order issued under Article 6.

(b) Unless otherwise specifically provided in the job order, all operational practices of the Contractor and all workmanship and material, equipment and articles used in the performance of work hereunder shall be in accordance with the rules of the American Bureau of Shipping, the requirements of the U. S. Coast Guard, the rules of the American Institute of Electrical Engineers, and the best com-

mercial marine practices. Standards other than the foregoing shall be specifically set forth in the job order.

(c) All material and workmanship shall be subject to inspection and test at all times during the Contractor's performance of the work to determine their quality and suitability for the purpose intended and compliance with job order. In case any material or workmanship furnished by the Contractor is found prior to delivery of the vessel to be defective, or not in accordance with the requirements of the job order, the Government, in addition to its rights under Article 11, shall have the right to reject such material or workmanship, and to require its correction or replacement by the Contractor at the Contractor's cost and expense. If the Contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the Contracting Officer, the Government may, by contract or otherwise, replace or correct such material or workmanship and charge to the Contractor the excess cost occasioned the Government thereby.

\* \* \*

(j) The Government does not guarantee the correctness of the dimensions, sizes and shapes set forth in any job order, sketches, drawings, plans or specifications prepared or furnished by the Government, except when a job order requires that the work be commenced by the Contractor prior to any opportunity to inspect the vessel. The Contractor shall be

responsible for the correctness of the shape, sizes and dimensions of parts to be furnished hereunder except as above set forth and other than those furnished by the Government. Any questions regarding or arising out of the interpretation of plans or specifications hereunder or any inconsistency between plans and specifications shall be determined by the Contracting Officer subject to appeal by the Contractor to Commander, Military Sea Transportation Service, or his duly authorized representative who shall not be the Contracting Officer. Pending final decision with respect to any such appeal, the Contractor shall proceed diligently with the performance of the work, as determined by the Contracting Officer. If it is determined that the interpretation of the Contracting Officer is not correct, an equitable adjustment in the job order price shall be made. Any conflict between this contract and any job order, including any plans and specifications, shall be governed by the provisions of this contract.

\* \* \*

#### Article 14. Disputes

Any disputes concerning a question of fact or price arising under this contract or under any job order or plans or specifications (other than matters to be determined by the Contracting Officer under Article 5(j) hereof) which is not disposed of by agreement between the Contractor and the Contracting Officer shall be referred to and decided by Commander, Military Sea Transportation Service, whc

shall furnish by mail or otherwise to the Contractor a copy of his decision. Within 30 days from the date of receipt of such copy, the Contractor may appeal such decision by mailing or otherwise furnishing to Commander, Military Sea Transportation Service, a written appeal addressed to the Secretary, and the decision of the Secretary or his duly authorized representative for hearing of such appeal shall be final and conclusive; provided that, if no such appeal is taken, the decision of Commander, Military Sea Transportation Service, shall be final and conclusive. In connection with any appeal from a decision by Commander, Military Sea Transportation Service, under this Article within the time limit herein specified, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract.

\* \* \*

## JOINT EXHIBIT No. 2

(Exhibit B)

Military Sea Transportation Service, Pacific  
33 Berry Street  
San Francisco 7, California

To: Triple "A" Machine Shop, Inc.,  
Pier 64,  
San Francisco 7, California.

Date: 2 October 1950.

Job Order No.: 10.

Contract No.: MST 235.

Repair to Lifeboats.

This Job Order issued pursuant to the provisions of the above-numbered contract, the terms of which by this reference are made a part hereof, Witnesseth That:

1. Work: The Contractor shall furnish the supplies and services required to perform the work described in the attached plans and specifications made a part hereof and designated as follows: Repairs to Five (5) Lifeboats, Specification No. MSTSP 51-64.

2. Price: The Government will pay the Contractor for the performance of this Job Order the following listed sum plus an amount at the unit prices on the reverse side hereof for the units specified and

furnished under Article 3 (c) of the above-numbered contract: \$3,775.00.

3. Commencement and completion dates: The work will be performed at Contractor's plant.

Contractor shall commence work on: 2 October, 1950.

Work shall be completed on or before: 11:00 a.m., 27 October, 1950.

4. Liquidated Damages: Pursuant to the Article of the said contract entitled "Default," the damages payable for each calendar day of delay shall be \$100.00.

5. Appropriation Chargeable: The work is chargeable to the following appropriation, title and account:

1711990.01 24302  
079 52900 62383

Payment to the Contractor will be made by the Government through the Navy Regional Accounts Office at Oakland, California.

6. This Job Order is issued pursuant to the authority of the Armed Services Procurement Act of 1947, Section: 3.

THE UNITED STATES OF  
AMERICA,

By .....,  
J. K. McCUE,  
Captain, USN,  
Contracting Officer.

## JOINT EXHIBIT No. 2

(Exhibit B)

Military Sea Transportation Service, Pacific  
33 Berry Street  
San Francisco 7, California

To: Triple "A" Machine Shop, Inc.,  
Pier 64,  
San Francisco 7, California.

Date: 2 October 1950.

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1711990.01 24302  
079 52900 62383

Payment to the Contractor will be made by the Government through the Navy Regional Accounts Office at Oakland, California.

6. This Job Order is issued pursuant to the authority of the Armed Services Procurement Act of 1947, Section: 3.

THE UNITED STATES OF AMERICA,

By .....  
J. K. McCUE,  
Captain, USN,  
Contracting Officer.

Accepted:

Date: October 11, 1950.

TRIPLE "A" MACHINE  
SHOP, INC.,  
(Contractor.)

Dp

By. /s/ A. ENGEL,  
President.

Certified to be a true copy.

(Exhibit C)

Military Sea Transportation Service, Pacific  
33 Berry Street  
San Francisco 7, California

Specification Number: MSTSP 51-64

20 September, 1950

Specifications

for

Repairs to Five (5) Lifeboats

Work to start on or about: 2 October, 1950.

All work to be completed on or before: 27 October, 1950—1100.

These specifications consist of 5 pages of which this is page 1.

Planner—Dalzell.

Certified to be a true copy.

/s/ E. L. HAYMOND.

It is the intent of these specifications to provide for the complete repair and reconditioning, both mechanically and structurally, of five (5) lifeboats, all as necessary to place the boats in first class operating condition and ready for use.

The work shall include, but shall not be limited to, any detailed specifications which follow:

The contractor shall furnish all labor, materials, transportation and all other equipment necessary to completely repair four (4) #13 and #14 gauge galvanized steel hulls and one (1) aluminum hull lifeboats now located in Rows Numbers 1 and 4 open storage space adjacent to Warehouse 3, Oakland Army Base. On award of the contract, the contractor shall immediately remove all five (5) lifeboats from Oakland Army Base to his plant for the accomplishment of the repairs. The Government will supply loading facilities.

All work shall be subject to inspection and approval by the U. S. Coast Guard and the U. S. Navy Inspector assigned.

The interior of each of the five (5) lifeboats shall be completely stripped of all equipment.

All food, water, gear or provision lockers or tanks shall be opened up for internal examination and cleaning. Replace all missing or defective filling caps, access covers, drop bolts, wing nuts, gaskets, and parts of like nature. All water, provision, and air tanks shall be tested and proven tight. Air tanks

shall be tested at one (1) pound per square inch air pressure.

Replacements of deteriorated tanks shall be accomplished only on a written field order.

When all hull repairs are completed, each boat shall be tested by filling with water and proven watertight.

All rudders and tillers shall be repaired or replaced where missing, properly painted and rudder fittings shall be faired, repaired or replaced where necessary.

Furnish new any missing or repair any defective oar locks, retaining chains or miscellaneous fittings attached to hulls. Reshape where necessary.

Examine and free up all releasing gear fittings. Replace missing or renew defective parts. Lubricate and leave in operable condition.

After each boat has been proven watertight, remove all blistered or loose paint from both interior and exterior of hull; clean to bare metal where directed, prime coat bare spots, and paint both interior and exterior with one (1) finish coat to match that now used on the boats.

Clean and paint interior and exterior of all food, provision or gear lockers or tanks. Clean and paint the exterior of all air tanks. Clean and paint both sides of all floor boards and seats.

Reinstall all equipment removed from each boat and leave ready for use.

Upon completion of all work, deliver all boats to Naval Supply Center, Oakland, California.

Detailed descriptions, specifications, and locations of the five (5) lifeboats are as follows:

One (1) Boat—Gas Driven:

Length	26'0"
Beam	9'0"
Depth	3.8'
Capacity	—43 persons

Builder: Welin Davit Boat Corporation, Perth Amboy, New Jersey.

Four (4) Boats—Type (Hand Propelled).

Length	30.66 feet
Beam	10.16 feet
Depth	4.25 feet
Capacity	—77 persons

Builder: Welin Davit Boat Corporation, Perth Amboy, New Jersey.

Category "A" Items

Item 1—Repair Gas Driven Boat—43 Persons:

\$3,375.

Code 110

Boat (Gas driven), Serial #A14597, Location Row #4, Space 22.

Builder: Welin Davit & Boat Corporation.

Open and examine gas engine (Gray Marino Lugger Sea Scout 91, 4 cyl., Engine #D20387) and

completely overhaul the engine and accessories. The Contractor shall remove the head, disassemble the engine and examine all moving parts. The contractor shall examine valves, seats, springs and keepers, grind valves and seats or replace same if found to be beyond economical repair, clean and remove carbon. Examine cylinders, pistons, piston rings, rods, bearings, and machine, refit or replace parts found worn or defective, thoroughly clean entire cooling system, remove and overhaul carburetor, distributor, starter, generator, fuel pump and other accessories, replace all worn or defective parts, clean and test gasoline tank and fuel lines from engine to tank, renew all ignition wiring, and starter button, check engine foundation, clean and paint same. Reassemble engine, renew gaskets, defective studs, bolts and nuts, install new spark plugs, examine suction and discharge piping and valves, examine exhaust piping and manifold, repair and/or renew as required to place in serviceable condition. Make all necessary adjustments and tune up engine. Contractor to furnish material, labor and equipment and test engine. Examine, repair and adjust clutch and make up coupling.

Open up the bilge pump (hand operated), examine, clean, free up, repair as necessary, assemble, renew suction and discharge hoses and test.

The contractor shall remove propeller and propeller shaft, check shaft for straightness, straighten and polish as required, clean and examine propeller, fair in leading and trailing edges, examine and clean

stern tube and stuffing box, reinstall propeller and shaft, repack stuffing box and test for operation.

Item 2—Repair Four (4) Lifeboats—77 Persons:

\$400.

Code 110

Boats (Hand Propelled), Serial Numbers A-5375, A-5114, A-5095 and A-5160.

Location: Row #1, Spaces 6, 15, and 16. Row #4, Space 11, respectively.

Builder: Welin Davit & Boat Corporation.

Boat #A-5375

Remove starboard side bilge plate amidships, straighten to its original shape and contour and re-install. (Approximately fifteen (15) square feet.) Remove indentations from port side to restore shell to its original shape and contour as when new. (Approximately six (6) square feet.)

Boats #A-5114 and A-5095

Remove indentations from port and starboard shell to restore to its original shape and contour as when new. (Approximate total damage both boats twenty (20) square feet.)

Boat #A-5160

Remove port side bilge plate amidships, straighten to its original shape and contour and re-install. (Approximately fifteen (15) square feet.) Remove

small indentation from starboard side to restore shell to its original shape and contour as when new.

Remove, reshape and/or renew the port and starboard grab rails and securing brackets.

Remove propellers and propeller shafts, check shafts for straightness, straighten and polish as required, clean and examine propellers, fair in leading and trailing edges, examine and clean stern tube bearings and stuffing boxes, reinstall propellers and shafts, repack stuffing boxes and prove operable.

Open up and examine transmission, gears, shafts and bearings, clean up and make minor repairs to put same in operable condition. Repairs to or replacements of damaged or missing parts shall be accomplished only on a duly authorized written Field Order. Reassemble transmissions and fill with proper lubricant. Examine and free up propelling mechanisms (hand operated) and associated fittings, free up, renew missing or deteriorated pins, screws, bolts, nuts and propelling handles, lubricate, assemble and make operable.

Open up bilge pumps (hand operated), examine, clean, free up, repair as necessary, assemble, renew suction and discharge hoses, and test.



Military Sea Transportation Service, Pacific  
33 Berry Street  
San Francisco 7, California

To: Triple "A" Machine Shop, Inc.,  
Pier 64,  
San Francisco 7, California.

Date: 27 November, 1950.

Change Order "A" to Job Order No.: 10.

Contract No.: MST 235.

Repair to Lifeboats.

This Change Order issued pursuant to the provisions of the above-numbered job order and contract, Witnesseth That:

1. Work: The Contractor shall make changes in the job order in accordance with the work described in the attached specifications made a part hereof and designated as follows: Addition No. 1 to Specification No. MSTSP 51-01.

2. Price: The job order price is, in accordance with Article 6 of the above numbered contract, hereby adjusted by the increased (decreased) sum of: \$9,490.00.

By reason of this Change Order, the total price of all work under the job order is hereby changed to: \$13,206.00.

3. Completion Date: As a result of the work set

forth herein, the completion date of the work under the job order is hereby extended to: 17 November, 1950.

4. Appropriation: The work set forth herein is applicable to the following appropriation, title and account: 1711990.01 24302

079 52900 62383

5. Except as hereby and heretofore amended, all the terms and conditions of the contract and job order remain in full force and effect.

THE UNITED STATES OF  
AMERICA,

By J. N. MOSES,  
Captain, U.S.N.,  
Contracting Officer.

Certified to Be a True Copy:

/s/ E. L. HAYMEND.

Accepted:

Date.....

.....,  
(Contractor)

By .....

Military Sea Transportation Service, Pacific Area  
33 Berry Street  
San Francisco 7, California

Specification Number: MSTSP 51-64

27 November, 1950

Addition Number 1

to

Specifications

for

Repairs to Five (5) Lifeboats

Contractor: Triple "A" Machine Shop

These specifications consist of page 6 only.

Item 2—Repair Four (4) Lifeboats—77 Persons  
(Addendum Number 1)

Code 110

Furnish all labor and material necessary to renew 146 air and provision tanks for four (4) metal lifeboats as follows:

Life boat No. A-5375, 32 Tanks

“ No. A-5160 38 Tanks

“ No. A-5114 35 Tanks

“ No. A-5095 41 Tanks

Tanks to be similar in all respects to ones replaced and tested to 1# air pressure in presence of U.S.C.G. and MSTSP Inspector. Confirming Field Order Number 1, dated 10 October, 1950.

WRD/ts

Certified to Be a True Copy :

/s/ E. L. HAYMEND.



Standard Form No. 1004, Revised  
Form prescribed by  
Comptroller General  
Regulation 7, 1938  
(Use Reg. No. 51, Supp. No. 11)

**PUBLIC VOUCHER FOR PURCHASES AND  
SERVICES OTHER THAN PERSONAL**

U. S. No. **49497**  
The Vouch. No.

U. S. **DEPARTMENT OF THE NAVY**  
**310 U. S. Navy Regional Accounts Office**  
(Department, Bureau, or establishment)

**1-30-51 WELSH  
ABRAMS**

Voucher prepared at **Oakland, California**  
(Give place and date)

THE UNITED STATES, Dr., **Payee's Account No.**

To **BANK OF AMERICA, COLUMBUS BRANCH,  
ASSIGNEE FOR TRIPLE "A" MACHINE  
SHOP INC  
1455 STOCKTON ST.,  
SAN FRANCISCO, CALIF.**

PAID BY  
1 JAN 31 1951  
C. I. SHAW  
SYMBOL 540,052  
(For use of Paying Office)

No. and Date of Order	Date of Delivery or Service	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)	QUANTITY	UNIT PRICE		AMOUNT	
				Cost	Per	Dollars	Cents
CHANGE ORDER "A" TO JOB ORD. 10-2-50 #10 THRU 11-17-50		PER ATTD INV. 1-16-51 NOTICE OF ASSIGNMENT PAPERS ATTD TO DOV NO. 46315 PD. 1/27/51 SYMBOL 540052				13265	00
PAYMENT							
Complete <input type="checkbox"/>							
Partial <input type="checkbox"/>							
Final <input type="checkbox"/>		SERVICES FOR MST'S PACIFIC, 33 BERRY ST., SAN FRANCISCO, CALIF.					
Shipped from		to		Government B.L. No.		Total	
						13265 00	

I certify that the above bill is correct and just and that payment therefor has not been received.  
(Sign original only)

Date \_\_\_\_\_ Payee \_\_\_\_\_  
Per **MST 235** Title \_\_\_\_\_  
Contract No. \_\_\_\_\_ Date \_\_\_\_\_ Reg. No. \_\_\_\_\_ Invoice Rec'd \_\_\_\_\_

Pursuant to authority vested in me, I certify that this account is correct and proper for payment.  
(Approved for) \_\_\_\_\_  
By \_\_\_\_\_ Title **G WON AUDITOR**  
Date \_\_\_\_\_  
SIGN ORIGINAL ONLY

THE REVERSE OF THIS FORM MUST BE EXECUTED WHEN PURCHASES ARE MADE OR SERVICES SECURED WITHOUT WRITTEN AGREEMENT IN ANY FORM

ACCOUNTING CLASSIFICATION (For completion by Administrative Officer)					
Appropriation, limitation, or project symbol	Appropriation title			Limit'n. or Proj't. (Amount)	Appropriation (Amount)
1711990201	NMF 51	079	52900	62383	13,265.00
Allocation symbol	Amount	Obligations Incurred	COST ACCOUNT		OBJECTIVE CLASSIFICATION
24302			Symbol	Amount	Symbol
					NO STUB

Paid by Check No. **15141** dated \_\_\_\_\_ 19 \_\_\_\_\_ for \$ \_\_\_\_\_  
on \_\_\_\_\_ 19 \_\_\_\_\_ Payee \_\_\_\_\_  
(on Treasurer of the United States in favor of payee named above)

EXHIBIT D  
(Precedential Ex. No. 7)



EXHIBIT E

(Pre-Trial Ex. No. 8)

Phone: YUkon 6-5836

Triple "A" Machine Shop, Inc.  
General Ship Repairs  
Pier 64  
San Francisco 7, Calif.

16 January, 1951.

Military Sea Transportation Service, Pacific  
Maintenance & Repair Division,  
33 Berry Street,  
San Francisco, California.

Services performed on Repair to Lifeboats (5)  
commencing 2 October, 1950, and completed 17 No-  
vember, 1950, per Change Order "A" to Job Order  
No. 10. Contract No. MST 235.

Total Contract Price: \$13,265.00.

These moneys have been assigned to the Bank of  
America, Columbus Branch, 1455 Stockton Street,  
San Francisco.

/s/ A. ENGEL.

I hereby certify that the above bill is correct and  
just; that payment therefor has not been received;  
that all statutory requirements as to American pro-

duction and labor standards, and all conditions of purchase applicable to the transactions have been complied with; and that State or local sales taxes are not included in the amounts billed.

TRIPLE "A" MACHINE  
SHOP, INC.,

Name of Contractor or Vendor.

By /s/ A. ENGEL,  
President.

Certificate of Naval Inspector

Pursuant to authority vested in me, I certify that the work and materials covered by the above-mentioned Job Order was duly performed, delivered and accepted by me under the Contract Number above. Approved for \$13,265.00.

/s/ W. F. WILLITS,  
Head Inspector, MSTSPAC.

Date 1-20-51.



NAVY  
13,265.00

OAKLAND, CALIF., JAN 31 1951 1-37

15, 141



# Treasurer of the United States 15-51 000

PAYS \*13,265. DOLLARS AND 00 CENTS 8\*13,265.00

BANK OF AMERICA, COLUMBUS BRANCH, ASSIGNEE FOR TRIPLE "A"  
MACHINE SHOP INC., SAN FRANCISCO, CALIF.

TO THE  
ORDER OF

Vp. No.  
19497



540,052

KNOW YOUR ENDORSER—REQUIRE IDENTIFICATION

**IDENTIFICATION PROCEDURES**  
When cashing this check, the cashier should require all endorsers to sign their names in your presence. A check cashed against endorsers may otherwise result.

The payee **should** endorse below in ink or indelible pencil.  
If the endorsement is made by mark (X) it must be made by the payee or someone who can write, giving their place of residence in full.  
It is suggested that this check be promptly negotiated.

DEPOSITED TO THE CREDIT OF  
*John A. ...*

EXHIBIT F  
(Res ondent's Pre-trial Ex. No. 6)

11-35  
21  
FEB 2 51 0258  
BANK OF AMERICA N.T. & S.  
SAN FRANCISCO, CALIF.

PAY TO THE ORDER OF  
THE BANKER OR TRUST CO.  
OF SAN FRANCISCO CALIF.  
YOUR ENDORSER'S GUARANTEE

1-37



JOINT EXHIBIT No. 3

(Respondent's Ex. G)

(Pre-Trial Ex. No. 4)

Military Sea Transportation Service, Pacific  
33 Berry Street  
San Francisco 7, California

Date: 21 September, 1950

Invitation No.: P51-36

Vessel: Lifeboats

Opening Date for This Bid

Date: 29 September, 1950

Hour: 3:00 p.m. (Pacific Standard Time)

Sealed bids, to perform the work specified in the Schedule designated below and submitted in accordance with attached instructions to bidders, will be received at Military Sea Transportation Service, Pacific, 33 Berry Street, San Francisco, California, and then publicly opened on the above date and hour. Schedule No. P51-36-1.

Schedule No. P51-36-1

Invitation No.: P51-36

Vessel: Lifeboats

1. The lifeboats will be made available for inspection by prospective bidders at:

Oakland Army Base at 9:00 a.m., 21 September, 1950.

2. The location where the work is to be performed will be:

Contractor's plant.

3. The work is to commence:

On award of job, on or about 2 October, 1950.

4. The work shall be completed on or before:

11:00 a.m., 27 October, 1950.

5. Liquidated damages shall be payable by the contractor to the Government in accordance with Article 13 of the MSTS Master Contract for Repair and Alteration of Vessels at the following listed rate per calendar day for any delay beyond the time of completion stated in the contractor's bid:

\$100.00.

6. The following drawings and specifications accompany this schedule and, upon the issuance of a Job Order, become a part thereof:

Specification No. MSTSP 51-64.

Repairs to Five (5) Lifeboats.

7. The successful bidder will receive prompt notification of award by the issuance of a Job Order under the MSTS Master Contract for Repair and Alteration of Vessels which the bidder agrees to accept if the Job Order is in accordance with the bid.

8. The successful bidder will furnish to the Contracting Officer a breakdown of the total bid show-

ing the price for each item, such breakdown to be furnished immediately after the issuance of a Job Order to the successful bidder.

9. Unless otherwise specified, the work shall be accomplished with the crew aboard, and the Contractor will schedule the work insofar as is reasonably practicable so as not to interfere with the loading, fueling or other work in the vessel, and the Contractor will perform all items relating to the examination of equipment which may require additional work, as soon as is reasonably possible.

10. Drawings are the property of the Government and shall not be used for any purpose other than that contemplated by the Schedule, and shall be returned upon request to the Contracting Officer.

11. For the purpose of awarding Job Orders, unit prices for work, if any, specified in Category B or Category C will be extended to cover the tentative estimated number stated in the Specifications. However, the Contractor may be required to furnish at the unit price the maximum number of units necessary to accomplish the work described in the Specifications.

12. An original and seven copies of invoices will be submitted to the Contracting Officer.

13. If the bidder, by checking the appropriate box provided therefor in his bid, has represented that he has employed or retained a company or person (other than a full-time employee) to solicit or secure this contract, he may be requested by the

Contracting Officer to furnish a complete Standard Form No. 119, "Contractor's Statement of Contingent or Other Fees for Soliciting or Securing Contract." If the bidder has previously furnished a complete Standard Form No. 119 to the office issuing this invitation for bids, he may accompany his bid with a signed statement, (a) indicating when such completed Form was previously furnished, (b) identifying by number the previous invitation for bids or contract, if any, in connection with which such Form was submitted, and (c) representing that the statements in such Form are applicable to this bid.

### Instructions to Bidders

#### 1. Form, Content, and Submission of Bid.

(a) Bids shall be submitted in triplicate upon the prescribed forms furnished to bidders and in compliance with the requirements given thereon and with these instructions. All designations and prices shall be set forth fully and clearly. Erasures or other changes in the bids shall be explained or noted over the signature of the bidder. Bids not submitted on prescribed forms may be rejected. Telegraphic bids will not be considered unless authorized in the accompanying Schedule. Telegraphic modifications of written bids, however, will be considered if received prior to the time fixed for the opening of the bids.

(b) Each bid shall contain the full business address of the bidder and shall be signed by him with

his usual signature. Bids by partnership shall contain the full names of all partners and shall be signed with the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations shall be signed with the legal name of the corporation, followed by the name of the State of incorporation and by the signature and designation of the president, secretary, or other persons authorized to bind it in the matter. The corporate seal shall likewise be affixed to the bid if requested by the Contracting Officer. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to his signature the word "president," "secretary," "agent," or other designation without disclosing his principal, may be held to be the bid of the individual signing. When requested by the Contracting Officer, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

(c) Bids must be enclosed in sealed envelopes addressed to the activity issuing the Invitation, with the name and address of the bidder, the date and hour of the opening, and the Invitation number written at the top left corner of the envelope. If the bid is mailed the sealed envelope containing the bid shall be further enclosed in a mailing envelope addressed to the Contracting Officer at the activity issuing the Invitation.

## 2. Time for Receiving Bids.

Bids received prior to the time of opening will be kept unopened. The person whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be considered unless it arrives by mail after the time fixed for opening but before award is made, and it is shown to the satisfaction of the Contracting Officer that the non-arrival on time was caused solely by delay in the mails.

## 3. Withdrawal of Bids.

Bids may be withdrawn by written or telegraphic request provided such request is received at the activity issuing the Invitation prior to the time fixed for the opening of the bids.

## 4. Opening of Bids.

At the time fixed for the opening of the bids, their contents will be made public for the information of bidders and others properly interested, who may be present either in person or by representative.

## 5. Acceptance of Bid and Issuance of Job-Order.

(a) The acceptance of the bid and issuance of a Job Order to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government price and other factors considered will be made with reasonable promptness after the opening of the bids. The Government reserves the right to make awards in re-



spect of any of the items, to reject any and all bids, to waive any informality in bids, and to make award either on the basis of an individual vessel or any grouping or combination of vessels, whenever such is in the interest of the Government. If the Invitation for Bids, Schedule, or Specifications require submission of bids by categories of items, the bidder is required to bid (1) on all items in Categories A and B, (2) on all or any items in Category C only, or (3) on all items in Categories A and B and all or any items in Category C. Awards shall be made (1) as to Categories A and B, (2) all or any items in Category C, or (3) Categories A, B and all or any items in Category C, as is in the best interest of the Government. Any bid conditioned in whole or in part on the revision or omission of any requirement or provision in the Schedule or accompanying documents as issued to prospective bidders or on the inclusion of any requirement or provision not contained therein will be rejected as a non-responsive bid and no award will be made to a bidder on such bid. The Government reserves the right to require, prior to the issuance of a Job Order, a statement of facts in detail of the business and technical organization and plant of the bidder available for the contemplated work, including the financial resources and experience of the organization in performance of comparable work.

(b) In determining whether or not an award is in the best interest of the Government, factors such as the cost to the Government in delivering the ves-

Category A Items

Repairs to five (5) life boats.

Total Price \$3,775.00

Category B Items

Item No.	Price	Item No.	Price
.....	\$.....	.....	\$.....
.....	\$.....	.....	\$.....
.....	\$.....	.....	\$.....
.....	\$.....	.....	\$.....
.....	\$.....	.....	\$.....

Category C Items

EXHIBIT I

(Respondent's Pre-Trial Ex. No. 14)

(Copy)

MSTS-3/lnh  
 Ser 12580M3  
 16 June 1952.

Triple "A" Machine Shop, Inc.  
 Pier 64  
 San Francisco 7, California

Re: Contract MST No. 235—Job Order No.  
 10; Appeal from decision of Contracting  
 Officer

Gentlemen:

Reference is made to the appeal of your firm from  
 the decision of the Contracting Officer to the effect

that the specifications under Job Order No. 10 of Contract MST No. 235, together with change orders issued by the Contracting Officer, are to be construed to include all work performed by you.

This appeal involves an interpretation of the specifications and hence is properly presented under Article 5(j) of the Contract. It is not considered that you have a right of appeal under Article 14 in as much as no dispute exists with respect to the facts.

Commander, Military Sea Transportation Service, has designated the Contract Advisory Board, of which the Contracting Officer is not a member, to examine the files and review all evidence pertaining to the dispute and to render a final decision. Mr. Blake of your company appeared before the Contract Advisory Board on 6 June, 1952, and discussed the issues involved and advised with respect to the position of the contractor. Upon a full hearing of the evidence and after careful consideration of the arguments presented by Mr. Blake the Contract Advisory Board found that the specifications as bid upon by the contractor and the Job Order as amended by duly issued change orders are to be construed to include all work performed by Triple "A" Machine Shop, Inc., with respect to the lifeboats in question.

Sincerely yours,

Copy to: J. Thaddeus Cline  
Attorney at Law  
Monadnock Building  
San Francisco 3, Calif.

## EXHIBIT J

(Respondent's Pre-Trial Ex. No. 10)

(Copy)

MSTSP-411C/71/Bi

L4-3

Serial 11667

2 Nov 1950

Mr. J. Thaddeus Cline  
Monadnock Building  
San Francisco 5, California

Dear Mr. Cline:

In reply to your letter dated 20 October 1950 covering repairs to five lifeboats under Job Order No. 10, Contract No. MST 235 with Triple "A" Machine Shop, Inc., your attention is invited to the specifications which read in part as follows:

"It is the intent of these specifications to provide for the complete repair and reconditioning, both mechanically and structurally, of five (5) lifeboats, all as necessary to place the boats in first class operating condition and ready for use.

"The work shall include, but shall not be limited to, any detailed specifications which follow:

"The contractor shall furnish all labor, materials, transportation and all other equipment necessary to completely repair four (4) #13

and #14 gauge galvanized steel hull and one (1) aluminum hull lifeboats now located in Rows Numbers 1 and 4 open storage space adjacent to Warehouse 3, Oakland Army Base. On award of the contract, the contractor shall immediately remove all five (5) lifeboats from Oakland Army Base to his plant for the accomplishment of the repairs. The Government will supply loading facilities.

“All work shall be subject to inspection and approval by the U. S. Coast Guard and the U. S. Navy Inspector assigned.”

In view of the foregoing, no additional payment will be made for the work in question.

Very truly yours,

J. K. McCUE,  
Captain, USN,  
Contracting Officer.

## EXHIBIT K

(Copy)

J. Thaddeus Cline  
Attorney at Law  
Monadnock Building  
San Francisco 5, California

June 28, 1951.

Military Sea Transportation Service, Pacific,  
33 Berry Street,  
San Francisco 7, California.

Re: Job Order No. 10, Contract No. MST 235,  
Subject: Placing claim in dispute.

Dear Sirs:

Reference is here made to my letter of October 10, 1950, and your reply dated November 2, 1950, wherein you refuse to compensate the contractor, Triple "A" Machine Shop, Inc., for the extra labor and materials that it was required to furnish on the above designated job.

Pursuant to Article 14 of Master Contract No. 235, demand is hereby respectfully made that the claim of Triple "A" Machine Shop, Inc., for payment of the reasonable value of all labor and materials furnished by said contractor that were not set forth in the specifications for the above designated job be referred to The Commander, Military Sea Transportation Service, for consideration and decision.

It is further requested that a hearing be held by

said Commander, and that said contractor be given notice thereof and permission to attend.

Respectfully yours,

J. THADDEUS CLINE.

JTC:jm

cc: Triple "A" Machine Shop, Inc.

EXHIBIT L

(Respondent's Pre-Trial Ex. No. 12)

(Copy)

MSTSP-411C/DP

L4-3

Ser 11539

16 October, 1950.

Triple "A" Machine Shop, Inc.,  
Pier 64,  
San Francisco 7, California.

Gentlemen:

Reference is made to Job Order No. 10, under Contract No. MST 235, covering Repairs to Five (5) Lifeboats.

In reply to your verbal request, you are hereby directed to proceed with the following work:

Renew all bands for securing tanks.

Renew twelve (12) shell plates and one (1) shell doubler chafing plate.

Renew two (2) sockets for propelling units.

Renew inboard margin boards on four (4) lifeboats.

Renew all floors in four (4) lifeboats.

Renew two (2) thwarts.

As you have indicated that you expect additional compensation for this work, you are hereby advised that it is considered the work set forth above is covered very fully in Specification No. MSTSP 51-64, copy of which is part of the Job Order.

In the circumstances, no additional payment will be made for this work.

Sincerely yours,

J. K. McCUE,  
 Captain, USN,  
 Contracting Officer.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 4, 1953.

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[Title of District Court and Cause.]

#### ADMISSION OF GENUINENESS OF DOCUMENTS

Whereas, the Respondent above named, has made and filed its request herein for Libelant's admission of facts and genuineness of documents pursuant to Rule 32B of Supreme Court Admiralty Rules, and

Whereas, Libelant has inspected the copy of said documents attached to the said request and finds



that the same appear to be in all respects true and correct;

Now, Therefore, the Libelant above named does hereby admit the genuineness of the said documents and facts recited in the said request.

Dated: March 16, 1953.

/s/ J. THADDEUS CLINE,  
Attorney for Libelant.

[Endorsed]: Filed March 17, 1953.

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[Title of District Court and Cause.]

## MOTION TO DISMISS

### I.

Comes now the United States of America, respondent herein, and moves on the pleadings, exhibits, documents and request for admissions on file herein, for dismissal of the above-entitled cause.

/s/ LLOYD H. BURKE,  
United States Attorney;

/s/ KEITH R. FERGUSON,  
Special Assistant to the At-  
torney General;

/s/ RICHARD J. HOGAN,  
Special Attorney, Department  
of Justice.

[Endorsed]: Filed October 30, 1953.

[Title of District Court and Cause.]

### PRE-TRIAL ORDER

This matter came on for pre-trial before the undersigned Judge of the above-entitled Court, on the 5th day of November, 1953, attended by J. Thaddeus Cline as proctor for libelant, and Richard J. Hogan, Jr., Special Attorney, Department of Justice, and Keith R. Ferguson, Special Assistant to the Attorney General, proctors for respondent, whereupon the following Pre-Trial Order was adopted.

#### Agreed Facts

1. That at all times material herein, libelant was and now is a corporation existing under the laws of the State of California.

2. That at all times material herein respondent United States of America was the owner of five lifeboats.

3. That at all of the times material herein Military Sea Transportation Service, Pacific, was an agency of the respondent United States of America and further that the said Military Sea Transportation Service, Pacific, acted for and on behalf of the respondent United States of America in the ownership, maintenance and repair of said lifeboats.

4. That on or about February 10, 1950, Military Sea Transportation Service, Pacific, under Contract MST-235, entitled "Master Contract for Repair and Alteration of Vessels" entered into a contract and agreement with libelant Triple "A" Machine Shop,

to make repairs, alterations and additions to vessels of the United States Government under Job Orders issued by the Contracting Officer of Military Sea Transportation Service, Pacific. That said contract has been at all times since in full force and effect between libelant and respondent herein as regards all repair work herein referred to.

5. That on September 20, 1950, "Specifications for Repairs" to five lifeboats issued under Specifications No. MSTSP 51-64, were issued.

6. That on September 21, 1950, Military Sea Transportation Service, Pacific, issued Invitation to Bid No. P 51-36, and solicited bids for repairs to five lifeboats on the basis of Specifications No. MSTSP 51-64.

7. That on September 29, 1950, in response to Invitation to Bid No. P 51-36, Triple "A" Machine Shop, Inc., libelant herein, submitted its bid for repairs to five lifeboats for a total price of \$3,-775.00.

8. That on October 2, 1950, Military Sea Transportation Service, Pacific, accepted the bid of Triple "A" Machine Shop, and issued "Job Order No. 10" under Master Contract MST-235 to Triple "A" Machine Shop, libelant herein, authorizing commencement of repairs to five lifeboats in accordance with Specifications for Repairs No. MSTSP 51-64.

9. That on November 27, 1950, Change Order No. A to Job Order No. 10 under Master Contract No. MST-235, was issued by Military Sea Transportation Service, Pacific, to Triple "A" Machine Shop,

libelant herein, making an addition to Specifications No. MSTSP 51-64 and the job order price as set forth in Job Order No. 10 was adjusted by making an allowance by Military Sea Transportation Service, Pacific, for an increase of \$9,490.00, or a total price for all work under Job Order No. 10 and Specifications for Repairs No. 51-64, of \$13,265.00.

10. That Triple "A" Machine Shop, libelant herein, has been paid by respondent United States of America the sum of \$3,775.00 alleged by libelant to be due and owing under Article V of libelant's First Cause of Claim set forth in the libel filed herein.

11. That Triple "A" Machine Shop, libelant herein, has been paid by respondent United States of America the sum of \$9,490.00, alleged by libelant to be due and owing under Articles II and III of libelant's Second Cause of Claim set forth in the libel filed herein.

12. That during the months of October and November, 1950, libelant was required by Military Sea Transportation Service, Pacific, to perform additional work and furnish labor and materials to effect certain repairs to the said lifeboats.

13. That although claim has been made by Triple "A" Machine Shop, libelant herein, against the respondent, United States of America, for the "reasonable value" of the said work performed, in the alleged amount of \$6,342.00 as set forth in libelant's Third Cause of Action, such sum has not been

paid and libelant has failed and refuses to pay said sum.

14. That in October, 1950, Triple "A" Machine Shop, libelant herein, was required to perform the aforesaid additional work on the said five lifeboats and libelant was advised by the Contracting Officer, Military Sea Transportation Service, Pacific, that such additional work was covered under the Specifications for Repairs No. MSTSP 51-64, Job Order No. 10 and Master Ship Repair Contract MST-235. That libelant proceeded with said work under written protest and notice to the Contracting Officer that libelant would require payment of the reasonable value of said additional work.

15. That in October, 1950, demand was made by Triple "A" Machine Shop, Inc., libelant herein, to Military Sea Transportation Service, Pacific, for payment of the "reasonable value of all labor and materials" furnished by the libelant and such demand was made pursuant to Article 14 of Master Ship Repair Contract MST-235.

16. That libelant, Triple "A" Machine Shop, in November, 1950, was advised by the Contracting Officer, Military Sea Transportation Service, Pacific, that the Contracting Officer has made a determination that pursuant to the terms of the Specifications for Repairs, Job Order No. 10 and Article 5(j) of the Master Ship Repair Contract No. MST-235, libelant was not entitled to additional compensation for said additional work and materials.

17. That the claim of Triple "A" Machine Shop,

libelant herein, for payment for the additional work performed on the five lifeboats was appealed to the Contract Advisory Board, Military Sea Transportation Service, by libelant under and pursuant to Article 5(j) and Article 14 of said Master Contract No. 235.

18. That the Contract Advisory Board, Military Sea Transportation Service, declined to consider said appeal under Article 14, but determined under Article 5(j) of the Master Ship Repair Contract MST-235, that the Specifications for Repair No. MSTSP 51-64 and Job Order No. 10 covered in full any and all work which libelant had been required to perform in repairing the said lifeboats, and that libelant accordingly was not entitled to reimbursement for said additional work.

### Contentions of Libelant

1. That the necessity for said additional repair work was not known to libelant and could not have been discovered by libelant until after libelant's said bid had been accepted and Job Order No. 10 had been issued.

2. That if the respondent knew or had reason to believe that said additional repair work would be necessary or required, then the concealment of such fact and failure to make disclosure thereof constituted actual and constructive fraud on the part of respondent.

3. That if the Contracting Officer did not know or have reason to believe that said extra repair work would be required, then said repairs could

not have been and were not, in fact, embodied in said specifications or job order.

4. That under Article 4 of said master contract libelant was only required to perform the work specified in the job order, plans and specifications.

5. That under Article 14 of said master contract libelant was required to proceed with said additional repair work on demand of the Contracting Officer and could not hold up the job pending the settlement of the controversy relative thereto.

6. That the refusal of the Contract Advisory Board, Military Sea Transportation Service, Washington, D. C., to entertain libelant's appeal under Article 14 of said master contract leaves the controversy open for judicial determination herein.

7. That the decision of the Contract Advisory Board, Military Sea Transportation Service, Washington, D. C., under Article 5(j) of said master contract is not a final and conclusive determination, and does not bar or limit libelant's right to a judicial determination of said controversy herein.

8. That the amount claimed in libelant's third cause of action herein, to wit, \$6,342.00, is the reasonable value of the said additional repair work, and that libelant is entitled to a judgment herein for said amount.

#### Contentions of Respondent

1. That Master Ship Repair Contract No. MST-235, provided under Article 5(j) thereof for an administrative determination by the Contracting Officer, Military Sea Transportation Service, Paci-

fic, and Commander, Military Sea Transportation Service, of all disputes arising under said Article 5(j) for repair of the five lifeboats as between the contracting parties.

2. That the Commander, Military Sea Transportation Service, pursuant to Article 5(j) of the Master Ship Repair Contract No. MST-235, determined that the alleged "additional work" was provided for within the provisions of the Specifications for Repairs MSTSP 51-64 and Job Order No. 10, and that extra pay therefore was not contemplated or provided for in the agreement to repair, above and beyond the contract price as agreed to by libelant in its bid for repairs.

3. That the decisions of the Commander, Military Sea Transportation Service, and the Contracting Officer, Military Sea Transportation Service, Pacific, were final and determinative of the dispute between the parties to the contract.

4. That the terms of Master Ship Repair Contract No. MST-235, the Specifications for Repairs MSTSP 51-64, and Job Order No. 10, govern exclusively the contractual relationship of the libelant and respondent herein.

#### Pre-Trial Exhibits

Libelant's:

Libelant refers to and adopts respondent's exhibits hereinafter referred to and in addition thereto lists the following, namely:

1. Letter from Military Sea Transportation Serv-



ice, Washington, D. C., to Triple "A" Machine Shop, Inc., dated October 21, 1951.

2. Letter from J. Thaddeus Cline, attorney for Triple "A" Machine Shop, Inc., to Military Sea Transportation Service, Washington, D. C., dated November 14, 1951.

Respondent's:

1. Contract No. MST-235, dated February 10, 1950, entitled:

Department of the Navy  
(Military Sea Transportation Service)  
Master Contract  
for  
Repair and Alteration of Vessels  
Between  
United States of America  
and  
Triple "A" Machine Shop, Inc.,  
San Francisco, Calif.

2. Specifications for Repairs to Five Lifeboats, Specifications No. MSTSP 51-64, dated September 20, 1950.

3. Job Order No. 10, Contract No. MST-235, issued to Triple "A" Machine Shop, Inc., dated October 2, 1950.

4. Invitation to Bid, dated September 21, 1950, Invitation No. P 51-36.

5. Bid Triple "A" Machine Shop, Inc., dated September 29, 1950, for repairs to five lifeboats.

6. Cancelled check, drawn on Treasury of the United States, payable to Bank of America, Columbus Branch, assignee Triple "A" Machine Shop,

San Francisco, in the amount of \$13,265.00, check No. 15,141, dated January 31, 1951.

7. Public Voucher for Public Services Other Than Personal, dated January 30, 1951, for account Triple "A" Machine Shop, Inc., in the amount of \$13,265.00.

8. Letter from Triple "A" Machine Shop, to Military Sea Transportation Service, Pacific, dated January 16, 1951.

9. Letter from Military Sea Transportation Service, Pacific, to Triple "A" Machine Shop, dated January 16, 1952.

10. Letter from Captain J. K. McCue, United States Navy Contracting Officer, Military Sea Transportation Service, Pacific, to Mr. J. Thaddeus Cline, dated November 2, 1952.

11. Letter from Mr. J. Thaddeus Cline to Military Sea Transportation Service, Pacific, dated June 20, 1951,

12. Letter from Captain J. K. McCue, United States Navy Contracting Officer, to Triple "A" Machine Shop, dated October 16, 1950.

13. Letter from J. Thaddeus Cline to Military Sea Transportation Service, Pacific, dated October 20, 1950.

14. Letter to Triple "A" Machine Shop, Inc., from Commander, Military Sea Transportation Service, dated June 16, 1952.

/s/ LOUIS E. GOODMAN,

Judge, U. S. District Court.

/s/ LLOYD H. BURKE,  
United States Attorney;

/s/ KEITH R. FERGUSON,  
Special Asst. to the Attorney  
General;

/s/ RICHARD J. HOGAN,  
Special Attorney, Department of Justice, Proctors  
for Respondent.

Approved:

/s/ J. THADDEUS CLINE,  
Proctor for Libelant.

[Endorsed]: Filed November 6, 1953.

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RESPONDENT'S PRE-TRIAL EXHIBIT No. 13

(Copy)

J. Thaddeus Cline  
Attorney at Law  
Monadnock Building  
San Francisco 5, California  
Telephone EXbrook 2-7445

October 20, 1950.

Military Sea Transportation Service, Pacific,  
33 Berry Street,  
San Francisco 7, California.

Attention: Captain J. K. McCue.

Re: Job Order No. 10, Contract No. MST 235.

Dear Sirs:

This letter is addressed to your office by the un-  
dersigned, as attorney for Triple "A" Machine

Shop, Inc., and is in reply to your letter addressed to said company under date of October 16, 1950.

As you know, the contract referred to in your letter was recently completed as far as possible until certain additional work could be performed and additional materials could be installed, namely, the work and materials referred to in your said letter. This additional work has been required to replace certain items that the Coast Guard inspector determined to be defective.

It is my understanding that a contractor has no right to hold up any job pending settlement of a dispute arising out of or relating to a ship repair contract. I have so advised the contractor and the said company has been and now is proceeding with the said additional work without waiting for a field order covering the reasonable cost thereof.

Before proceeding with the said additional work, the reasonable cost of a substantial part thereof was checked over on the job by the Navy Inspector. His figures have been heretofore delivered to your office. The cost as determined by the said inspector appears to be unreasonably low, but the same will be accepted by the contractor as to the items covered. If the same or any part thereof can be shown to be too high, we will readily agree to any reasonable adjustment. Likewise, the contractor will only require payment of the reasonable value of the other items that were not included in the inspector's said statement.

You are respectfully advised, however, that the said

contractor has not and will not accept your erroneous statement, that the said additional work and materials are included in the said contract. To the contrary, the said contractor does now and will demand and require full payment of the reasonable cost of furnishing and installation of same. You are further advised that it is expected that the contract will be completed and the said additional work will be performed within the time mentioned in the contract, but you are informed that the contractor will not assume any responsibility or liability for any delay in completing the said contract that may result from the furnishing of the said additional work and installing the said additional materials.

Yours very truly,

/s/ J. THADDEUS CLINE.

JTC:jm

cc: Triple "A" Machine Shop, Inc.

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[Title of District Court and Cause.]

REQUEST FOR ADMISSION OF GENUINE-  
NESS OF DOCUMENTS UNDER RULE 32B,  
SUPREME COURT ADMIRALTY RULES

To: The Respondent above named and to Lloyd H. Burke, Keith R. Ferguson and Richard J. Hogan, Proctors for Respondent:

You, and each of you, will please take notice that the Libelant above named hereby requests said Respondent, pursuant to Rule 32B of the Supreme Court Admiralty Rules, to admit within ten (10)

days after service of this request the genuineness of the following documents:

1. Letter from J. Thaddeus Cline, as attorney for Triple "A" Machine Shop, Inc., to Department of the Navy, dated November 14, 1951, copy of which is annexed hereto, marked "Exhibit A."

2. Letter from Department of the Navy executed by W. H. von Dreele, addressed to Triple "A" Machine Shop, Inc., dated October 22, 1951, a copy of which is annexed hereto, marked "Exhibit B."

Dated: November 20, 1953.

/s/ J. THADDEUS CLINE,  
Proctor for Libelant.

### EXHIBIT A

(Copy)

J. Thaddeus Cline  
Attorney at Law  
Monadnock Building  
San Francisco 5, California  
Telephone EXbrook 2-7445

November 14, 1951.

Department of the Navy,  
Military Sea Transportation Service,  
Washington 25, D. C.

Attention: W. H. von Dreele, Captain, U.S.N.,  
Director, Maintenance & Repair Division.

Subject: MST Contract #235—Job  
Order #10.

Your ref. MSTS-41C/bh,  
Ser. 20255M4,  
22 Oct., 1951.

Dear Sirs:

Your letter of October 22, 1951, addressed to Triple "A" Machine Shop, Inc., has been referred to the undersigned for reply.

The said contractor had been advised by your local office that its claim should be handled as a dispute under Article 14, of the Master Contract. It was for this reason that the appeal referred to the said section.

The suggestion contained in your said letter that the appeal might well be considered under Article 5-(j) is sincerely appreciated. It is quite possible that the last mentioned section would give your office greater latitude in considering the merits of said contractor's claim than you would have under Article 14.

Instead of electing to appeal under one article or the other, it would seem more appropriate to appeal under both of said articles. This would surely enable your office to consider the said claim from all possible angles. You are, therefore, respectfully notified that said contractor does appeal under Article 14 and also under Article 5-(j).

To assist your office in arriving at a just decision,

a few pertinent facts will be briefly commented upon.

Triple "A" Machine Shop, Inc., was the low bidder on the lifeboat job here in question. The said company submitted its bid on the specifications prepared by the Government. So far as was known to anyone or that could be ascertained from inspecting the boats, the specifications completely covered all necessary repairs.

In going ahead with their contract and in order to do the work set forth in the specifications, the tanks were removed. The Coast Guard and M.S.T.S. inspectors then came on the job and condemned certain plates and parts of the boats. Pursuant to a letter dated October 16, 1950, from the office of Deputy Commander, Military Sea Transportation Service, Pacific, Triple "A" Machine Shop, Inc., was required to do the following specified extra work. There seems to be some error in reference to the charge for the said extra work, in that your letter of October 22nd refers to the figure of \$5,392.00. The extra work done, as aforesaid, is hereinafter listed with the proper charge for each of the items, namely:

298 sq. ft. shell plate.....	\$3,600.00
All floors in 4 lifeboats.....	1,000.00
Approx. 270 sq. ft, #1 lumber for margin boards.....	352.00
2 Hand gear propelling sockets.....	90.00
All galvanized iron tank straps.....	200.00
All aluminum tank straps.....	50.00
Thwarts (2 renewed).....	150.00



Life lines and floats on boats.....	225.00
116 ft. splash railing.....	140.00
24 hanging clips for splash railing.....	70.00
24 sockets for splash railing.....	70.00
Renewed 2 plates and 2 doublers which specifications called for fairing and same were found cracked.....	395.00
Total.....	<u>\$6,342.00</u>

No one can dispute the fact that the contractor could not possibly have known that the above-listed parts were defective. Likewise, the Government could not have known that the boats required any repairs other than as expressly listed in the specifications. Even the inspectors could not have determined that additional work would be required until after the tanks had been removed by the contractor.

It can not be claimed that the Government knew of the existence of these extra defects; because if such were the case, then the failure to include the same in the specifications would have amounted to a positive fraud and deception on the part of the Government.

On the other hand, if the Government did not know of these defects that were hidden by the tanks, how can it now be claimed that the contractor could or should have known of their existence.

Contracts of this kind should in every instance be fair, open, and above-board. Government prepared specifications should not be a trap for the unwary. A bid should always be a fair estimate of the

value of the labor and materials required to effect a certain specified job. A bidder on a Government job should not be required to surmise, guess or gamble as to the nature and extent of the job in question.

It is, therefore, respectfully urged that the appeal be sustained in favor of the contractor and that an order be made to pay said contractor the full reasonable value of said extra work.

Yours very truly,

J. THADDEUS CLINE.

JTC:jm

cc: Triple "A" Machine Shop, Inc.

EXHIBIT B

(Libelant's Pre-Trial Ex. No. 2)

Department of the Navy  
Military Sea Transportation Service  
Washington 25, D. C.

In reply refer to  
MSTS-41C/bh  
Ser 20255M4

22 Oct., 1951.

Triple "A" Machine Shop, Inc.,  
Pier 64,  
San Francisco 7, Calif.

Subj: MST Contract #235

Gentlemen:

Commander, Military Sea Transportation Service, Pacific, has forwarded to this office your claim

in the amount of \$5,392.00 for additional compensation in connection with contract MST-235, job order #10. Pertinent correspondence from your representative, Mr. J. Thaddeus Cline, indicates that you desire to appeal under Article 14 of subject specifications. However, there appears to be a question regarding interpretation of specifications, which would seem to be more accurately covered by Article 5-(j).

Kindly advise whether you desire to appeal these matters under Article 5(j) of subject specification, and whether you wish to submit further evidence to substantiate your claim.

Yours very truly,

W. H. von DREELE,

Captain, U. S. N., Director Maintenance & Repair  
Division.

Copy to: COMSTSPAC.

[Endorsed]: Filed November 20, 1953.

[Title of District Court and Cause.]

ADMISSION OF GENUINENESS OF  
DOCUMENTS

Whereas, the libelant above named has made and filed its request herein for respondent's admission of genuineness of documents pursuant to Rule 32-B of Supreme Court Admiralty Rules, and

Whereas, respondent has inspected the copies of said documents attached to the said request and finds that the same appear to be in all respects true and correct;

Now, Therefore, the respondent above named does hereby admit the genuineness of the said documents recited in the said request.

Dated. November 20, 1953.

/s/ LLOYD H. BURKE,  
United States Attorney;

/s/ KEITH R. FERGUSON,  
Special Assistant to the At-  
torney General;

/s/ RICHARD J. HOGAN,  
Special Attorney, Department of Justice, Proctors  
for Respondent.

[Endorsed]: Filed November 20, 1953.

[Title of District Court and Cause.]

ORDER RESERVING RULING ON MOTION  
TO DISMISS

Libelant seeks to recover \$6,342.00, alleged to be owing for work done under a contract to repair and alter vessels of the United States. The United States has moved to dismiss the libel upon the ground that libelant's claim was by the terms of the contract subject to administrative determination by officers of the United States whose decision was binding and conclusive upon the parties.

The contract contains two provisions for the administrative determination of disputes—Articles 5(j) and 14. Article 14 is the general “disputes” provision of the contract and sets forth the procedure for the determination of “any disputes concerning a question of fact or price” arising under the contract or any job order or plan or specifications other than the matters to be determined under Article 5(j). Article 5(j) prescribes the means for settlement of “any questions regarding or arising out of the interpretation of plans or specifications” or “any inconsistency between plans and specifications.”

Article 14 provides a three-stage procedure—initial determination by the contracting officer, referral to the Commander, Military Sea Transportation Service, and appeal to the Secretary of the Navy. The decision of the Secretary is made final

and conclusive, and in the event no appeal is taken to the Secretary, the decision of the Commander, M.S.T.S. is final and conclusive. Article 5(j) prescribes a two-stage procedure—initial determination by the contracting officer and appeal to the Commanders, M.S.T.S., or his representative. But, Article 5(j) does not specify that the Commander's decision shall be final and conclusive.

When libelant asserted the claim upon which it now seeks recovery, it was disapproved by the contracting officer. Libelant thereupon referred it to the Commander, M.S.T.S., with the statement that the claim was referred under the provisions of Article 14. Libelant was notified that the matters in dispute were of a class determinable under Article 5(j) rather than Article 14. Libelant then advised the Commander, M.S.T.S., that the appeal was taken under both Articles to assure that the claim received proper consideration.

The Commander, M.S.T.S., designated the Contract Advisory Board as his representative to hear the appeal. The Board declined to hear the appeal under the provisions of Article 14, but considered and denied Libelant's claim under the provisions of Article 5(j). Libelant apparently did not press for determination of its claim pursuant to Article 14, for no attempt was made to appeal to the Secretary of the Navy from the adverse decision of the Board.

The United States now contends, upon its motion to dismiss, that the decision of the Board was final

and conclusive. Libelant urges in opposition to the motion that an administrative determination made pursuant to Article 5(j) is not by the terms of the contract final and conclusive.

There is no occasion for the court to decide whether determinations made pursuant to the procedure prescribed in Article 5(j) were intended by the parties to be final, unless the matters here in dispute were of the class required to be determined under Article 5(j). It cannot be clearly ascertained from the pleadings, exhibits, and the agreed statement of facts whether the matters in dispute were of the class to be determined under Article 5(j) or under Article 14 or in some other manner. Only the evidence at the trial will clarify this issue. Consequently, ruling on the motion to dismiss is reserved until the trial. Rule 12(d) F.R.C.P.

Dated: December 11, 1953.

/s/ LOUIS E. GOODMAN,  
United States District Judge.

[Endorsed]: Filed December 11, 1953.

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[Title of District Court and Cause.]

### STIPULATION RE VALUE OF MATERIALS AND LABOR

It is Hereby Stipulated as follows:

That the libelant performed certain work and furnished certain materials in the repair of the life-

boats referred to in the third cause of action in the libel and libelant contends that such work so performed and materials furnished were extra work not provided for in that certain contract awarded to libelant as the lowest bidder which contention respondent denies. The respondent United States of America contends that such work and materials were performed and furnished, as demanded by respondent, pursuant to and as provided for by the terms of said contract so awarded to libelant as the lowest bidder for such work and necessary for the completion of the repair of said lifeboats and not as extra work or extra materials as contended by libelant. The work performed and materials furnished are as follows:

298 sq. ft. shell plate.

All floors in 4 lifeboats.

Approx. 270 sq. ft. #1 lumber for margin boards.

2 Hand gear propelling sockets.

All galvanized iron tank straps.

All aluminum tank straps.

Thwarts (2 renewed).

Life lines and floats on boats.

116 ft. splash railing.

24 hanging clips for splash railing.

24 sockets for splash railing.

Renewed 2 plates and 2 doublers which specifications called for fairing and same were found cracked.

It is Further Stipulated that the value of the said



labor and materials is the sum of Six Thousand Forty Dollars (\$6,040.00).

Dated: December 16th, 1953.

/s/ LLOYD H. BURKE,  
United States Attorney;

/s/ KEITH R. FERGUSON,  
Special Assistant to the Attorney General;

/s/ RICHARD J. HOGAN,  
Special Attorney Department of Justice, Proctors  
for Respondent.

/s/ J. THADDEUS CLINE,  
Proctor for Libellant.

[Endorsed]: Filed December 24, 1953.

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[Title of District Court and Cause.]

### ORDER FOR ENTRY OF JUDGMENT

It is Ordered that there be entered herein upon findings of fact and conclusions of law, judgment in favor of the defendant United States of America and that the respective parties pay their own costs.

Dated: February 24th, 1954.

/s/ MICHAEL J. ROCHE,  
Chief United States District  
Judge.

[Endorsed]: Filed February 24, 1954.

In the Southern Division of the United States  
District Court, Northern District of California

In Admiralty—No. 26198

TRIPLE "A" MACHINE SHOP, INC., a Cor-  
poration,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent.

### FINAL DECREE

This cause having come on to be heard by the above-entitled Court on the 16th and 17th of December, 1953, the libelant appearing by its proctor, J. Thaddeus Cline, Esq., and respondents by its proctors, Lloyd H. Burke, Esq., United States Attorney; Keith R. Ferguson, Esq., Special Assistant to the Attorney General, and Richard J. Hogan, Esq., Special Attorney, Department of Justice, and the Court having considered the evidence, both oral and documentary, and the arguments of counsel and the cause having been submitted upon the briefs of the parties on file herein, and the Court, after due deliberation, having filed herein its Order for Entry of Judgment in favor of the respondent and the Court having made and entered its Findings of Fact and Conclusions of Law, it is therefore

Order, Adjudged and Decreed that the above-

entitled cause be and the same is hereby dismissed, each party to bear its own costs.

Dated: March 10, 1954.

/s/ MICHAEL J. ROCHE,  
Chief United States District  
Judge.

Lodged March 9, 1954.

[Endorsed]: Filed March 10, 1954.

Entered March 11, 1954.

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[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The above-entitled action coming on regularly for trial before this Court on the 16th and 17th of December, 1953, the respondent United States of America, appearing by its proctors, Lloyd H. Burke, United States Attorney; Keith R. Ferguson, Special Assistant to the Attorney General, and Richard J. Hogan, Special Attorney, United States Department of Justice, and libelant appearing by its proctor J. Thaddeus Cline, pre-trial hearing having been had, all parties declared themselves ready for trial, whereupon evidence, both oral and documentary, was submitted to the Court on behalf of libelant and respondent and upon conclusion of all the evidence and after oral argument and submission of

briefs by respective counsel, the cause was duly submitted. After due deliberation of all the evidence and of the law relative thereto, the Court being duly advised in the premises now makes the following:

### Findings of Fact

#### I.

Libelant Triple "A" Machine Shop, Inc., at all of the material times referred to herein was and still is a corporation, organized and existing under the laws of the State of California and was and still is engaged in the business of constructing and repairing sea-going ships and boats.

#### II.

Respondent United States of America was at all of the material times referred to herein the owner of five (5) lifeboats, one (1) lifeboat gas driven of 20'0" in length, beam 9'0", of a capacity of 43 persons; four (4) lifeboats, hand-propelled, length 30.66 feet, beam 10.16 feet and with a capacity of 77 persons.

#### III.

That on February 10, 1950, the respondent through its agency Military Sea Transportation Service, Pacific, and the libelant entered into a "Master Contract" for repair and alteration of vessels, Contract MST-235, which provided by Article 5(j) thereof, as regards any work to be performed by libelant for respondent, pursuant to any

specifications issued for repairs to any of the respondent's vessels:

“The Government does not guarantee the correctness of dimensions, sizes and shapes set forth in any job order, sketches, drawings, plans or specifications prepared or furnished by the Government \* \* \*. Any questions regarding or arising out of the interpretation of plans or specifications hereunder or any inconsistency between plans and specifications shall be determined by the Contracting Officer subject to appeal by the Contractor to Commander, Military Sea Transportation Service, or his duly authorized representative who shall not be the Contracting Officer. Pending final decision with respect to any such appeal, the Contractor shall proceed diligently with the performance of the work, as determined by the Contracting Officer.”

#### IV.

That the respondent on September 21, 1950, by Invitation No. P 51-36 solicited from various ship repair and construction corporations in the San Francisco and Oakland, California, area, bids to perform work involving repairs to five (5) lifeboats; that accompanying the Invitation to Bid was Specification No. MSTSP 51-64 which set forth the work to be accomplished on the five (5) lifeboats. The Invitation to Bid advised bidders as to the location of the lifeboats, their availability for inspection and that Specifications for Repair No. MSTSP

51-64 accompanying the Invitation to Bid, upon the issuance of a Job Order by the respondent, would become a part of the Invitation to Bid.

## V.

That Specification No. MSTSP 51-64 accompanying the Invitation to Bid No. P-51-36 provided:

“It is the intent of these specifications to provide for the complete repair and reconditioning, both mechanically and structurally, of five (5) lifeboats, all as necessary to place the boats in first class operating condition and ready for use.

“The work shall include, but shall not be limited to, any detailed specifications which follow:

“The contractor shall furnish all labor, materials, transportation and all other equipment necessary to completely repair four (4) #13 and # 14 gauge galvanized steel hulls and one (1) aluminum hull lifeboats now located in Rows Numbers 1 and 4 open storage space adjacent to Warehouse 3, Oakland Army Base. On award of the contract, the contractor shall immediately remove all five (5) lifeboats from Oakland Army Base to his plant for the accomplishment of the repairs. The Government will supply loading facilities.

“All work shall be subject to inspection and approval by the U. S. Coast Guard and the U. S. Navy Inspector assigned.

“The interior of each of the five (5) lifeboats shall be completely stripped of all equipment.”

Further provision was made as follows:

“Replacements of deteriorated tanks shall be accomplished only on a written field order.”

## VI.

That libelant, through its authorized agent, libelant's Vice-President and General Manager, made a thorough inspection of the five (5) lifeboats as to their condition and need for repairs; that all items requiring repair were visible and open to inspection by the libelant's agent and said agent made such notes relative to repairs to be accomplished as he deemed necessary.

## VII.

That on September 29, 1950, the libelant in response to Invitation to Bid No. P 51-36 did “subject to all the terms and conditions of the bid schedule and instruction relating thereto” offer and agree by its bid submitted to respondent over the signature of libelant's President to completely repair and recondition, both mechanically and structurally, the five (5) lifeboats specified in the Invitation to Bid No. P 51-36 and Specification No. MSTSP 51-64 at a total price of \$3,775.00 and said bid was submitted on a basis of computations as to work needed to be done and the cost thereof made by libelant's own marine surveyor and Vice-President and General Manager.

## VIII.

That on the 2nd of October, 1950, Job Order No. 10 was issued by the respondent through its agency, Military Sea Transportation Service, Pacific, in accordance with Article 3 and Article 4 of Master Ship Repair Contract No. MST-235; that by such Job Order the libelant was directed to furnish the supplies and service required to perform the work described in Specification No. MSTSP 51-64 entitled "Repairs to Five (5) Lifeboats," and said Job Order No. 10 set forth therein the agreed total price of \$3,775.00 submitted by libelant for the repairs.

## IX.

That the libelant entered upon performance of the work pursuant to Master Contract MST-235, Specifications for Repairs No. MSTSP 51-64 and Job Order No. 10; that on the 27th of November, 1950, Change Order "A" to Job Order No. 10 issued from the respondent through its agency, Military Sea Transportation Service, Pacific, providing for "Addition No. 1 to Specifications for Repairs MSTSP 51-64," increasing the job order price and authorizing payment to libelant of the sum of \$9,490.00 for replacement of air and provision tanks in four (4) lifeboats; that Change Order "A" to Job Order No. 10 was issued by respondent in conformance with the provision in Specification No. MSTSP 51-64 providing as follows:

"Replacements of deteriorated tanks shall be accomplished only on a written field order."



## X.

That prior to completion of the repairs to the five (5) lifeboats, inspection was made thereof by the United States Coast Guard and an Inspector, an employee of Military Sea Transportation Service, Pacific, pursuant to Specifications for Repairs No. MSTSP 51-64, at which time it was determined by the inspectors that certain repairs were required in order to insure compliance with Federal statutory requirements as to seaworthiness.

## XI.

That the repairs which were found to be necessary by reason of the inspection made by the Coast Guard Inspector and Inspector for Military Sea Transportation Service, Pacific, did not comprise extra work to be performed by the libelant, but were only such repairs and work required to be accomplished and performed in order to conform with the terms and conditions of the Specifications for Repairs MSTSP 51-64; that all such items of repair were visible and subject to inspection and ascertainment by libelant's representative prior to submission of libelant's bid; that the value of the labor and materials furnished by the contractor for such work and materials was in the amount of \$6,040.00.

## XII.

That the libelant on or about the 16th of October, 1950, was directed to furnish materials and accomplish the repairs necessary to effect complete repairs and reconditioning of the five (5) lifeboats as pre-

scribed in Specification No. MSTSP 51-64; that on or about the 16th of October, 1950, libelant advised Military Sea Transportation Service, Pacific, that it expected additional compensation for the work; that on the 16th of October, 1950, libelant was informed formally in writing by Military Sea Transportation Service, Pacific, through its Contracting Officer, as provided for under Article 5 (j), Master Contract MST-235, that the labor and materials for which extra compensation was requested was considered to be covered fully under Specification No. MSTSP 51-64 and that no additional compensation for the work and materials would be paid.

### XIII.

That in November, 1950, the Contracting Officer, Military Sea Transportation Service Pacific, again made a formal written determination, communicated to libelant, under the provisions of Article 5(j) of Master Contract MST-235 that the Specifications for Repairs MSTSP 51-64 and Job Order No. 10 required libelant to do all work necessary to completely repair and recondition the boats and that work and materials furnished by the libelant were not "extra," were not outside the terms, scope and provisions contemplated by the contract, and therefore, no additional payments would be made for the work in question.

### XIV.

That the libelant herein appealed the decision of the Contracting Officer, Military Sea Transportation Service, Pacific, to the Contract Advisory

Board, Military Sea Transportation Service, Washington, D. C., and that such appeal was made by the libelant pursuant to both Article 5(j) and Article 14, of Master Contract MST-235.

XV.

That the Contract Advisory Board, Military Sea Transportation Service, Washington, D. C., determined that the dispute between libelant and respondent concerned a question regarding or arising out of the interpretation of plans and specifications under Article 5(j) of the Master Contract MST-235; that the Specifications for Repair No. MSTSP 51-64 and Job Order No. 10 provided for and covered in full all work which libelant had been required to perform in completely repairing the five (5) lifeboats and that libelant accordingly was not entitled to reimbursement for said additional work.

XVI.

That the libelant herein has been paid by respondent United States of America the sum of \$3,775.00 alleged by libelant to be due and owing as set forth by libelant in Article V of libelant's first cause of claim in the libel filed herein for labor and materials furnished under the repair contract.

XVII.

That libelant herein has been paid by respondent United States of America the sum of \$9,940.00 alleged by libelant to be due and owing as set forth

by libelant in Articles I and III of libelant's second cause of claim in the libel filed herein for labor and materials furnished under the repair contract.

### Conclusions of Law

#### I.

That the labor performed and material supplied by the libelant in the value of \$6,040.00 were contemplated by and provided for in the Specifications for Repairs MSTSP 51-64 and Job Order No. 10 and libelant is not entitled to extra pay therefor above and beyond the contract price as agreed to and submitted by libelant in its bid for repairs.

#### II.

That the terms and provisions of Master Contract MST-235, Specifications for Repair MSTSP 51-64, Job Order No. 10 and libelant's bid for repairs submitted on September 29, 1950, govern exclusively the contractual relationship between libelant and respondent; that the Contracting Officer, Commander, Military Sea Transportation Service, acting pursuant to Article 5(j) of Master Contract MST-235, having determined that the alleged "extra work" for which libelant sought recovery, was provided for and contemplated by the provisions of the Specifications for Repair MSTSP 51-64, Job Order No. 10 and libelant's bid for repairs, dated September 29, 1950, and that extra pay therefor was not contemplated or provided for in the agreement to repair, above and beyond the con-

tract price as agreed to by libelant in its bid for repairs and that such determination by the Contracting Officer acting under the authority of Article 5(j) of Master Contract MST-235 was final and conclusive as to libelant and respondent.

III.

That the decision of the Contracting Officer, Military Sea Transportation Service, Pacific, made pursuant to Article 5(j) of Master Contract MST-235 constituted a final and conclusive determination of the dispute as between the contracting parties and therefore cannot be set aside by this Court.

IV.

That libelant has failed to prove a cause of action against the respondent United States and is not entitled to recover from respondent under the libel on file herein.

It Is Therefore Ordered that a decree be entered in favor of the respondent United States of America and that the libel herein be dismissed without costs.

Dated: March 10, 1954.

/s/ MICHAEL J. ROCHE,  
Chief United States  
District Judge.

Lodged March 1, 1954.

[Endorsed]: Filed March 10, 1954.

[Title of District Court and Cause.]

NOTICE OF MOTION TO AMEND FINDINGS  
OF FACT, PURSUANT TO RULE 52(b)

To: The Respondent above named, and

To: Lloyd H. Burke, United States Attorney; Keith  
R. Ferguson, Special Assistant Attorney Gen-  
eral; Richard J. Hogan, Special Attorney, De-  
partment of Justice.

You, and each of you, will please take notice that on the 30th day of March, 1954, at the hour of 9:30 o'clock a.m., or as soon thereafter as counsel can be heard, the libelant above named will move the above-entitled Court, Department of Chief United States District Judge Michael J. Roche thereof, for an order amending the Findings of Fact and Conclusions of Law herein so as to make the same conform to the agreed facts as contained in the Pre-Trial Order herein and the evidence introduced at the trial and the law applicable to this case.

That said motion will be based on this notice of motion and will be made on the ground that the Findings of Fact and Conclusions of Law as prepared by the respondent above named and signed by the Court above named do not conform to the evidence or the law applicable to this case.

Dated: March 19, 1954.

/s/ J. THADDEUS CLINE,  
Proctor for Libelant.

[Endorsed]: Filed March 19, 1954.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR NEW TRIAL  
PURSUANT TO RULE 59

To: The Respondent above named, and

To: Lloyd H. Burke, United States Attorney; Keith R. Ferguson, Special Assistant Attorney General; Richard J. Hogan, Special Attorney, Department of Justice.

You, and each of you, will please take notice that on the 30th day of March, 1954, at the hour of 9:30 o'clock a.m., or as soon thereafter as counsel can be heard, the libelant above named will move the above-entitled Court, Department of Chief United States District Judge Michael J. Roche thereof, for an order granting a new trial herein.

That said motion will be based upon this notice of motion and will be made on the following grounds:

1. Insufficiency of the evidence to justify the decision herein.
2. That the decision is contrary to law.
3. Errors of law, occurring at the trial and excepted to by libelant.

Dated: March 19, 1954.

/s/ J. THADDEUS CLINE,  
Proctor for Libelant.

[Endorsed]: Filed March 19, 1954.

[Title of District Court and Cause.]

### MOTION TO MODIFY DECREE

Comes now the United States of America, respondent above named, and moves the Court to modify its Decree entered herein on March 10, 1954, and for grounds of said Motion, alleges:

1. That the said Decree inadvertently provides in lines 27 and 28 thereof:

“Ordered, Adjudged and Decreed that the above-entitled cause be and the same is hereby dismissed, each party to bear its own costs.”

whereas said Decree should properly provide as follows:

“Ordered, Adjudged and Decreed that judgment be entered herein in favor of the respondent, United States of America, and that the respective parties hereto pay their own costs.”

2. That the Decree entered herein on March 10, 1954, was inadvertently entered in that it did not enter judgment as provided for in the Order for Entry of Judgment entered and filed on February 24, 1954.

Said Motion will be based upon all of the orders, pleadings and files in the above-entitled cause.

Dated: March 30, 1954.

LLOYD H. BURKE,  
United States Attorney;



/s/ KEITH R. FERGUSON,  
Special Assistant to the  
Attorney General;

/s/ RICHARD J. HOGAN,

Special Attorney, Department of Justice, Proctors  
for Respondent United States of America.

### NOTICE OF HEARING OF MOTION

To: Triple "A" Machine Shop, Inc., libelant above  
named, and J. Thaddeus Cline, its proctor  
herein:

You, and each of you, will please take notice that  
respondent above named will call up for hearing  
the within Motion before this Court on Monday,  
April 5, 1954, at the hour of 10:00 a.m., or as soon  
thereafter as counsel may be heard in the Courtroom  
of the above-entitled Court, Post Office Building,  
Seventh and Mission Streets, San Francisco, Cali-  
fornia.

Dated: March 30, 1954.

LLOYD H. BURKE,  
United States Attorney;

/s/ KEITH R. FERGUSON,  
Special Assistant to the  
Attorney General;

/s/ RICHARD J. HOGAN,  
Special Attorney, Department of Justice, Proctors  
for Respondent United States Attorney.

[Endorsed]: Filed March 31, 1954.

[Title of District Court and Cause.]

ORDER DENYING MOTIONS FOR NEW  
TRIAL AND TO AMEND FINDINGS

The motions of plaintiff for a new trial and to amend findings of fact, having been heard and submitted, and the Court being fully advised in the premises;

It Is Hereby Ordered that the said motions be, and the same are, hereby Denied.

Dated: April 15, 1954.

/s/ MICHAEL J. ROCHE,  
U. S. District Judge.

[Endorsed]: Filed April 15, 1954.

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[Title of District Court and Cause.]

MODIFIED FINAL DECREE

This matter coming on for hearing before the undersigned Judge of the above-entitled Court upon the Motion of the respondent herein for the entry of a Modified Final Decree to conform to the Order for Entry of Judgment made and entered in this cause on February 24, 1954, and the libelant appearing by its proctor, J. Thaddeus Cline, Esq., and respondent appearing herein by its proctors, Lloyd H. Burke, Esq., United States Attorney; Keith R. Ferguson, Esq., Special Assistant to the Attorney General, and Richard J. Hogan, Esq., Special Attorney,

Department of Justice, and the matter being fully heard on the arguments of counsel for the libelant and respondent herein and the Court being fully advised in the premises, it is

Ordered, Adjudged and Decree that the Motion to modify the said Final Decree made and entered herein by the above-entitled Court on March 10, 1954, be and the same is hereby granted and said Final Decree is hereby modified to conform to the Order of this Court for Entry of Judgment entered herein February 24, 1954, and in accordance therewith it is

Further Ordered, Adjudged and Decreed that judgment be entered herein in favor of the respondent United States of America and that the respective parties hereto pay their own costs.

Done in Open Court this 5th day of April, 1954.

/s/ MICHAEL J. ROCHE,

Chief United States District  
Judge.

Lodged April 5, 1954.

[Endorsed]: Filed April 15, 1954.

Entered April 16, 1954.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Honorable Court Above Named:

Notice Is Hereby Given that Triple "A" Machine Shop, Inc., Libelant above named, hereby appeals to the United States Court of Appeals, Ninth Circuit thereof, from the judgments, decrees and orders made and filed in the above-entitled action, as follows:

1. Order for Entry of Judgment made and filed on February 24, 1954.
2. Final Decree, dated March 10, 1954, as modified by Modified Final Decree, dated April 5, 1954, and filed April 15, 1954.
3. Order denying libelant's motion to amend Findings of Fact.
4. Order denying libelant's Motion for New Trial.

Dated: May 7, 1954.

/s/ J. THADDEUS CLINE,  
Proctor for Libelant and  
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed May 7, 1954.

[Title of District Court and Cause.]

STATEMENT OF POINTS APPELLANT  
INTENDS TO RELY UPON ON APPEAL

In its appeal Libelant and Appellant above named intends to rely upon the following points and specifications of error on the part of the Court above named, to wit:

1. That the Findings of Fact and Conclusions of Law herein;

(a) Omit material facts established by the Pre-Trial Order and the evidence introduced at the trial.

(b) Are materially at variance with the facts as established by the Pre-Trial Order and evidence.

(c) Contain conclusions of law under the designation of "facts."

(d) That the conclusions of law as set forth in the Findings and in the Court's "Conclusions of Law" are contrary to law.

(e) That the Conclusions of Law are at variance with the Court's Order for Entry of Judgment made and entered on the 24th day of March, 1954, and the "Final Decree" made and entered on March 10, 1954, and as modified by the Court by Order of April 5, 1954.

2. That the Court was in error in refusing to grant Libelant's Motion to Amend the Findings of Fact and Conclusions of Law.

3. That the Court was in error in refusing to grant Libelant's motion for new trial.

4. That the Court was in error in ruling that the Libelant's bid did not establish the amount of repairs it was required to make at the price specified in said bid.

5. That the Court was in error in ruling that Libelant was not entitled to compensation for making repairs that were not listed or specified in Libelant's bid.

6. That the Order for Entry of Judgment and the "Final Decree" as made and as modified are contrary to law.

7. That the Court was in error in ruling that the decision of the Contracting Officer and the Contract Advisory Board, as an administrative appeal agency, was final and conclusive as to Libelant's claim and libel herein.

Dated: May 7th, 1954.

/s/ J. THADDEUS CLINE,  
Proctor for Libelant and  
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed May 7, 1954.

The United States District Court, Northern  
District of California, Southern Division

No. 26198

Before: Hon. Michael J. Roche, Judge.

TRIPLE "A" MACHINE SHOP, INC.,

Libelant,

vs.

UNITED STATES OF AMERICA, et al.,

Respondent.

REPORTER'S TRANSCRIPT

Wednesday, December 16, 1953

Appearances

For Libelant:

J. THADDEUS CLINE, ESQ.

For Respondent:

RICHARD J. HOGAN, ESQ.

Opening Statements

The Clerk: Triple A Machine Shop, Inc., versus  
United States for trial.

Mr. Cline: Ready.

Mr. Hogan: Ready, your Honor.

The Clerk: Counsel, please state your appearance for the record.

Mr. Cline: J. Thaddeus Cline, C-l-i-n-e, attorney  
for the libelant.

Mr. Hogan: Richard J. Hogan, attorney for the respondent, United States.

Mr. Cline: I ask the indulgence of the Court to allow us to make a brief opening statement to acquaint the Court with what our theory is in general in this matter and with the procedure, I believe, that is agreeable and has been agreed upon by Mr. Hogan and myself. Is that agreeable to the Court?

The Court: Certainly.

Mr. Cline: All right. The issue here, we believe, or I believe, will be largely one of law rather than facts, particularly since so many facts have been agreed upon between counsel as set forth in a pre-trial order.

This action is, as indicated, by Triple A Machine Shop against the United States for certain ship repair, that is, lifeboat repair. The Triple A Machine Shop is a firm here in [2\*] San Francisco engaged almost exclusively in ship and boat repair, doing work primarily for the various government agencies. The work here in question, this type of work, doing ship repair for the Navy and its agencies, the Military Sea Transportation Service and so on, is in the first instance handled under what is termed a Master Contract Number 235. This particular contract is an exhibit attached to the respondent's answer in the case. It is before the Court.

After the contract or proposed contractor or fitter has entered into this contract, the Master Contract 235, he is then eligible, with other qualifications, of

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.



course, to engage in government business or bid for and enter into business as a contractor to do certain ship repair work.

Now, here is the agreed statement of facts, this is what the agreed statement of facts or the pre-trial order establishes. The libelant here, Triple A Machine Shop, entered into this master contract in the Fall of 1950; I don't remember the exact date, and for this purpose it isn't important, except, I believe, in September of 1950 the respondent, through the Military Sea Transportation Service, or as it is more easily referred to, the MSTS, published an invitation or gave out an invitation to bid on the repair of five lifeboats. The specifications were prepared by the respondent, the invitation to bid was prepared by the respondent and the form which was to be used by the prospective bidders was prepared by the respondent, [3] Government.

The libelant here, based upon the Master Contract 235 and other specifications—there were no plans—the specifications and this invitation to bid, did check in and inspect the boats and did enter a bid, which also is made a part, these facts are stated and are facts in the case by reason of the pre-trial order here and agreed statement of facts between counsel, and this particular bid is also made an exhibit and is referred to in this pre-trial order, the bid of three thousand—I believe it is \$3,775, I believe.

Now the specifications set forth under what they designate in accordance with the general practice in ship repair work, under schedule or category A, the specifications list certain definite work to be done on

each of the several five lifeboats. One lifeboat, for instance, is, as it is shown here—it has only engine repair listed. Others have certain plates to be replaced and others have certain dents to be taken out and so on. But the specifications in the preamble contain a generalized statement to the effect that the contractor will have to do anything else that may be necessary to put the boats in first class condition. That is, as I say, in the opening preamble of the invitation. And then later in the category A, and this is all very material to our theory, and I think the Court should be aware of what our theory is probably at the outset, rather than trying to reconstruct it at the conclusion of the hearing; [4] and under category A, these various items are listed, and on which the libelant bid, and was low bidder and successful bidder.

Then as the work progressed, there were certain plates or tanks, these lifeboats had tanks and it was determined after the work had started that certain tanks had to be replaced or repaired, and this particular work was covered by what is termed a field order, an additional order directing the work to be done and fixing an additional price of around \$9,400 for this tank work. And then, in addition to that, during the course of the construction and after these tanks had been taken out and the floor boards had been taken out, the inspector determined that certain considerable other work that was not therefore apparent had to be done.

Now under the master contract that I have referred to, the contractor has no alternative. During the course of construction work if he is required—and the contractor cannot stop the job and quarrel about whether this work is going to be done or not, or whether he is going to be paid or not. Under the master contract he must proceed with the work and leave the controversy until afterwards. So that here—and the pre-trial order will show, that the libelant was called upon to do this certain other additional work, requiring the putting in of a good many hull plates, putting in a lot of thwarts and flooring and so on. And that they sought, as is shown by the pre-trial order, they sought to determine in advance that this extra work [5] would be paid for. They were given notice, as is also shown by the pre-trial order, the MSTS gave them notice they would have to proceed with the work and claimed that it came within the specifications, and there would be no payment for it. That is, any extra payment. And it is also shown and agreed by the pre-trial order that the libelant proceeded with the work under written protest and under notice that this work was outside of the specifications on the contract and that reasonable compensation would be required for this extra work.

Now the work was done and the lifeboats were accepted and a demand was made upon the Government for the payment of this extra work. The claim was rejected by the local office of the MSTS, the contracting officer, and then in accordance with the provisions of the master contract, a notice of appeal

was given and the matter was taken up on appeal in Washington before the Contract Advisory Board.

This board, the appeals were regularly taken and we make no question of it, we assume they were duly placed before the Contract Advisory Board for determination, and this Contract Advisory Board is an agency of the same contracting officer, the Military Sea Transportation Service, but it was set up in Washington to hear controversies of this kind. And then word was received back by libelant, their appeal was filed under Article 14 of the Master Contract, which sets up that in case of a controversy between the contracting officer of the Government [6] and the contractor, locally, in case of disputes, why, the dispute may be referred to Washington for hearing and determination. And this was sent there under Rule 14, which provides that in cases of this kind that their determination is final and conclusive.

The board wrote back, as is also—it is here, the letters are here before the Court, stating that in their determination the matter did not come under Article 14, but under Article 5(j) and desired the contractor to proceed with his appeal under Article 5(j).

Now as is shown by the exhibits here in Court, the libelant responded, accepting the Government's suggestion of Article 5(j), and continuing the appeal under both sections, under Article 14 and under 5(j). And as the letter before the Court shows, the board back there, that they would then have full latitude to consider the thing and make determination. And the board did consider it and did deter-

mine and made its determination, which is before the Court, under 5(j).

The Court: Jointly or severally?

Mr. Cline: A joint letter, a notice that they had reached their decision, and so far as we know it was a unanimous decision.

The Court: On the 14 and 5(j)?

Mr. Cline: No, under 5(j) only.

The Court: What became of the 14? [7]

Mr. Cline: The exhibit, as is shown here, shows, and it is agreed in the statement of facts between counsel in the pre-trial order, there's no question about it, they declined to accept the appeal under 14. They said that was not right, that it didn't come under 14, it came under 5(j).

The Court: And the hearing—

Mr. Cline: And the hearing was had under 5(j), and they made their determination under 5(j), and their determination was that the claim that we are now talking about was not compensable. They claimed that, they determined apparently that it came within the specifications, and the contractor was bound to have done this work under his general contract.

The Court: Was their determination final?

Mr. Cline: No, your Honor. Now that—now there was in answer to that question, as the file will show, shortly here, within the last two or three weeks or thereabouts, three or four weeks, the respondent made a motion in this Court, initially before his Honor Judge Goodman, for a motion to dismiss on the ground that Article 14 by its very lan-

guage stated that the determination on an appeal was final and conclusive, it having, as the Government in its motion contended—this matter having been passed upon as, the libelant was bound by the decision and it was final and conclusive and we had no standing in Court.

The respondent filed a memorandum in opposition, the matter was briefly discussed before his Honor Judge Goodman, taken [8] under submission, and we point out to the Court that the motion is without foundation in—I beg your pardon.

The Court: Pardon me. Did he act on the order?

Mr. Cline: No, your Honor. It was expressly reserved.

The Court: I see.

Mr. Cline: By written order in the file, expressly reserved under Rule 12(d).

The motion, as we point out, is without foundation and substance, in that it is based upon a complete false premise. They rely upon Section, Article 14 of the Master Contract, and—as the basis of their order and their own evidence in Court here in connection with the pre-trial order clearly establishes, and it is admitted in the admitted facts and the accepted facts in the pre-trial order, that the decision was—that the board declined to accept the appeal under 14, that the appeal was accepted and heard only on Article 5(j), and Article 5(j)—and in Judge Goodman's opinion there is no question about it, Article 5(j) has no such provision that the determination of the administrative board shall be final or conclusive. So that we—nor is there any provision

for any further administrative procedure. In other words, as the record will show, we have exhausted all of our administrative procedural rights. There is nothing further we can do. So we come before the Court now in this action and our theory is simply this. The bid, the specifications list category A of certain specified [9] work. The bid, which is in evidence and was introduced in evidence or bound in connection with the pre-trial order by the Government, will clearly show and the evidence will show, and there is no dispute about it, it is a form of bid that is prepared by the Government. The bid itself expressly and on its face is for Category A, nothing else. That the work, that the bid was \$3,750. Now within the last twelve hours we have been able to remove another matter that might take the time of the Court, and counsel, and that is, there's a question of the charge. The pre-trial order clearly establishes that the work we are talking about was required by the Government to have been done. I don't mean—they don't acknowledge that it wasn't done, come within our, plans and specifications. They claim it came within the plans and specifications and we claim it didn't. But there is no question but what the what the work had to be done. There is a question of the reasonable amount of it. Our offer was \$6,340. We claimed that was fair and reasonable for this extra work that we were required to do during the course of this job.

Now that's something we would, an issue we would have had to have proved here by witnesses, and

we did have expert witnesses available yesterday, but it was agreed late yesterday afternoon between Mr. Hogan and myself, that, we agreed on both sides on a figure of \$6,040. In other words, reducing our claim, I think it is \$300 or something or other, which obviates the necessity of bringing in any evidence on the question of what work was [10] done or the reasonableness of the charge, so that we get down now to simply a question of whether or not this particular work that we are talking about is or is not part of the contractual obligation of the libelant.

While we are on the subject, I would like to, it is probably very trivial because it is so obviously a typographical error, it's on page 3 of the pre-trial order. There I would like to correct or have corrected on the face, I have spoken to Mr. Hogan about it, it's on the—it would be about five, six lines from the bottom. It is the last, next to the last line of the last, next to the last paragraph, the word "libelant" should be changed to "respondent."

The Court: Page?

Mr. Cline: Page 3 of the pre-trial order.

The Court: Signed by Judge Goodman?

Mr. Cline: Yes, it was signed by Judge Goodman. Yes, it was signed and approved by both counsel and signed by Judge Goodman.

The Court: What is the language?

Mr. Cline: Well, in the last line, it's on line 25 I believe, it's the word "libelant" should be changed to "respondent." It reads, "Such sum has not been



paid and libelant has failed and refused to pay the same." That should read, "and respondent has failed and refused to pay the same."

The Court: No objection? [11]

Mr. Hogan: No objection, your Honor.

The Court: Let it be amended on its face.

Mr. Cline: And then as to—it has also, I believe, been sort of informally agreed between Mr. Hogan and myself as to a procedure to be followed here, to expedite the trial, probably add to the clarity of it, to have the documents that are referred to in the pre-trial order introduced into evidence in the same number that they bear in the pre-trial order. They are listed severally from number 1 to 14, and then adding to that is number—I presume being—

The Court: Page 7?

Mr. Cline: That would be page 7 and 8, your Honor. And then adding to that, I suppose it would be his number 15 and 16, the two letters that are referred to in libelant's request for admission of documents that was filed in this matter on or about November 20, '53, there being a letter from the Navy Department, Military Sea Transportation Service, dated October 21, 1951, addressed to the libelant and a response to the said letter from myself as attorney for libelant dated November 14, 1951. Is that agreeable, Mr. Hogan?

Mr. Hogan: That is agreeable.

Mr. Cline: So then if they could be considered in evidence and bearing the exhibit numbers in the pre-trial order, and these other two, being numbered 15 and 16.

Now there is only one other matter that I think

should be [12] called to the Court's attention just by way of clarity. The libel here is in three causes of action. We are proceeding to trial only on the third cause of action, and that is the only thing that I have been discussing with the Court this morning. The first cause of action I don't even now recall, but the items in there, there's no question about it, they have been paid. We are discussing here, we are just proceeding on the third cause of action for this extra work in the amount that we have now agreed upon as being \$6,040.

The Court: I will hear from Mr. Hogan.

Mr. Hogan: If your Honor please, my statement will be brief. I think that Mr. Cline's statement has been essentially fair. Respondent's position in this case is simply that the Government stands squarely on the written provisions of its contract. The contract involved, its terms on the provisions of the specifications for repairs. We say simply that the words and the intent of the contract and the specifications are clear and unambiguous. That this was a contract between people who on both sides were in the shipping business and in the business of operating and repairing vessels, all of them experts in their respective fields. In short, none of the parties were, as we might say, innocents abroad. From the writing in this contract there could have been only one meaning to the parties concerned, and that goes as well for the writing in the specifications. We feel that they are perfectly clear. [13]

This so-called extra work was not in any sense extra, it was only work that the libelant was obliged and obligated to do only in accordance with

the clear meaning of the contract and the specifications for repairs. It was an open type contract with an opportunity to inspect and to bid on the basis of the specifications and on the basis of the inspection to be made by the contractor, and all of the work was subject to changes and alterations by inspectors, provided for in the specifications, Navy inspectors and Coast Guard inspectors.

Now we are prepared to go into the question of the extra work, item by item, and will show that it was only work that the contractor should have performed. There was nothing extra and there was nothing exceptional. There has been no allegations or charges of fraud. We don't propose that we shall have to meet them and I think that that concludes my statement, and we may then proceed.

The Court: Call your first witness. [14]

Wednesday, December 16, 1953—9:30 A.M.

(Following opening statements by counsel for the respective parties, the following proceedings were had.)

The Court: Call your first witness.

Mr. Cline: Mr. Blake.

WILLIAM CLAIR BLAKE

called as a witness on behalf of the libelant, having been first duly sworn, testified as follows:

The Court: Your full name, please?

A. William Clair Blake.

Q. Spell your last name?

(Testimony of William Clair Blake.)

A. B-l-a-k-e.

Q. Where do you reside, Mr. Blake?

A. 264 Mallorca Way.

Q. San Francisco?           A. Yes, sir.

Q. Your business or occupation?

A. Vice-president and general manager of Triple A Machine Shop.

The Court: Take the witness.

Mr. Cline: Yes, your Honor. [2\*]

### Direct Examination

By Mr. Cline:

Q. Now, Mr. Blake, you are—what is your business and profession?

A. I am a marine engineer.

Q. And you are connected, are you, with the Triple A Machine Shop, Inc., the libelant in this matter?           A. Yes, sir, I am.

Q. What is your capacity?

A. Vice-president and general manager.

Q. And what particular part of the work of the firm do you handle?

A. Take care of the management plus the bidding, estimating and general running of the firm.

Q. And the work of this firm is primarily devoted to ship repair, is that right?

A. Yes, sir.

Q. Are you familiar with the bid that was made on the five lifeboats that are involved in this action?

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of William Clair Blake.)

A. Yes, I made the bid.

Q. Calling your attention to the specifications which by our stipulation in this matter I believe would be Exhibit No. 2, (Respondent's Exhibit No. 2, Pre-trial Order) (Also Respondent's Exhibits B and C, Request for Admission of Facts and Genuineness of Documents.) [3-A] and the proposal or invitation to bid, which I believe would be Exhibit No. 4 by our stipulation, (Respondent's Exhibit No. 4, Pre-trial Order—Exhibit No. 3 in evidence) [3-B] and the actual form of bid, the actual bid that was put in, which I believe is Exhibit No. 5, (Respondent's Exhibit No. 5, Pre-trial Order—Joint Exhibit No. 4 in evidence.) [3-C] I will show you those documents, or I will show [3] you these exhibits, namely, the specifications for the repair of five lifeboats and the invitation to bid and the actual form of bid and copy of bid that you put in, and ask you if you have seen these documents before?

A. Yes, sir.

Q. And you saw them in connection with the bidding on these five lifeboats?           A. Yes, I did.

Q. From whom did you get these documents?

A. From the Military Sea Transportation Service, at 33 Berry Street.

Q. All right. And after you received the copy of the specifications and the invitation to bid and copy of the bid, did you inspect the five lifeboats that are referred to in the invitation?

A. Yes, I did—only for the repairs—

(Testimony of William Clair Blake.)

Q. Where were the boats when you inspected them?

A. They were over at the Oakland Army Base.

Q. And now referring to the specifications for the repair of the five lifeboats, I will ask you to refer to this and particularly this (indicating), what is called Category A items, and ask you if you referred to that in connection with your inspecting the boats and arranging for your bid on the job?

A. Well, on the Category A items on this one lifeboat were [4] the engine repairs, I looked over the lifeboat in the way of the engine, to the overhaul of the engine only, as specified under Category A.

On the other lifeboats I looked over just what is specified, to renew the thwarts or to renew a plate, the starboard side bilge plate. That's all we looked at, because that's all that is specified under Category A. And we determined and made our bid as to just what work was involved under Category A.

Q. Now later—your firm was low bidder on the job, is that right?      A. Yes, sir.

Q. And you did start, took possession of the five lifeboats and removed them to your shop, did you?

A. That's right, sir.

Q. Where is your place of business?

A. Pier 64 in San Francisco.

Q. That is, you have rented Pier 64 for your operation?      A. Yes, sir.

Q. And adjoining territory for your offices and so on?      A. That's right

(Testimony of William Clair Blake.)

Q. And during the course of this construction work or this repair work as described in Category A of the specifications, you were required, were you, to do certain other and additional work?

A. Yes, sir. [5]

Q. That is the work that is referred to in your libel in this matter, is that right?

A. That's right, sir.

Q. Now was that additional work apparent when you inspected the boats?

A. No, sir, you couldn't see that work that was involved, because you would have to disassemble the boats over at the Oakland Army Base and take them all apart, put them back, and you can't disassemble and destroy Government property. They wouldn't let you.

Q. Well now, tell me about the construction of these lifeboats. Do they have tanks or floats of some kind in there?

A. Yes, sir, the tanks are put in with straps. They are screwed into the wooden thwarts and they are always riveted into the hold of the ship, and the only way you could disassemble them is by taking them into the shipyard and taking the tanks out and then make your survey of the hull plates or the flooring involved. You couldn't see them where they were at.

Q. That is, the tanks and the flooring covered up this work that you were later required to do?

A. That's right, sir. It couldn't be determined.

Q. This additional work that is referred to in your libel didn't become apparent and you weren't

(Testimony of William Clair Blake.)

directed to do it until after the boats, lifeboats had been brought to your [6] plant?

A. That's right, sir.

Q. And after the tanks had been taken out and the flooring had been taken out, is that right?

A. When the repairs had got under way.

Q. Now the exterior of the lifeboats; were they painted or unpainted or——

A. As I remember, the boats were all painted and the shell plates as specified in the specifications were clearly marked, "Renew," just written on there.

Q. So that if there were any pit marks or rust holes or anything on the exterior of the boat, that had all been covered with paint?

A. That's right, sir, you couldn't tell.

Q. And the plates that were for renewal as specified were marked, you say, in yellow pencil?

A. Yes, sir.

Q. Now referring to your bid, which is apparently Exhibit 5-A in evidence, (Respondent's Exhibit No. 5, Pre-trial Order) (Also Respondent's Exhibit H—Request for Admission of Facts and Genuineness of Documents.) [7-A] I will call your attention to the document and ask you if this is a carbon copy of your original bid that is in evidence?

A. Yes, sir.

Q. Now it is a two-sided document, is that right?

A. Yes, sir.

Q. And the face of it here as we are now looking at it, has [7] the heading, "Category A Items——"



(Testimony of William Clair Blake.)

that is, the face or the front of the document, is that right?      A. Yes, sir.

Q. And was this the only bid that you submitted?

A. Yes, sir.

Q. And was this the only document that your firm signed in connection with bidding on these five lifeboats?      A. Yes, sir.

Q. That is, other than subsequent job orders or something, is that right?

A. Yes, that's right.

Q. Now what is the meaning in the business of ship repair of this heading, "Category A Items"?

A. Category A items is for a definite amount of work, and a price to do "X" amount of work as specified.

Q. That is, such as——

A. Under that classification.

Q. Appears in the specifications in connection with this particular job?      A. That's right.

Q. The Category A items are expressly set forth in this——

A. Under Category A, that's right, sir.

Q. And your bid was just on Category A items, is that right, sir?      A. That's right. [8]

Q. \$3,775?      A. Yes, sir .

Q. And that bid in the form that it now stands was accepted, is that right?      A. Yes, sir.

Q. Now this same form of bid, or this exact document here, also below the Category A items, and the contract or the bid for the Category A items,

(Testimony of William Clair Blake.)

also has a heading, "Category B Items," is that right?      A. Yes, that's correct.

Q. And Category C Items?

A. That's right.

Q. Now those are covering items, indefinite items or items which may or may not be done?

A. That's right, sir. There was none.

Q. There were none in these specifications?

A. No, there was none in that specification.

Q. And you listed none?

A. That's right, sir, there was none there.

Q. As I understand it, you didn't contemplate bidding on anything other than what you did bid on here, Category A items?

A. That's all they asked for. It wasn't in the specifications.

Mr. Cline: That's all at this time. You may have the [9] witness.

The Court: Do you want to introduce the contract in evidence?

Mr. Cline: Well, is that made a part—maybe—no. In the pre-trial—maybe I didn't proceed correctly on this.

Counsel, Mr. Hogan, and I thought a quick way or an easy way, expeditious way of getting these documents in evidence was to refer to the pre-trial order. Now, before the pre-trial order was made, the Government submitted a request for admission of Genuineness of certain documents. They are the same documents that are listed by brief reference and number in the pre-trial order.

(Testimony of William Clair Blake.)

Also as a pre-trial procedure the libelant, through myself, filed a request for admission of the genuineness of two letters that I have referred to. Now we thought that, rather than taking them out of the file individually and having them stamped, we could with the Court's approval stipulate that these documents that are referred to in the pre-trial order that was made in this matter—well, it doesn't seem to bear a date—made in this matter a few weeks ago could go by stipulation—be in evidence bearing these same exhibit numbers here, like for instance this pre-trial order, it says, Respondent's No. 1, Contract MST-235, dated—now, that is the master contract that I have referred to.

Now if this is going to cause confusion, I would much [10] prefer that we back up and go ahead in the usual course of taking these documents and——

The Court: Well, the usual course is this. You have been examining the witness on the stand in relation to this contract. Of necessity it will have to go into evidence by either one side or the other; that is, if I follow you.

Mr. Cline: Yes.

Mr. Hogan: Your Honor, here was my original thought. All of these documents are now, I believe, in evidence in any event, because they were admitted as genuine pursuant to admission of facts, and the genuineness of documents exchanged between the two of us.

I was going to suggest that the Clerk mark them as joint exhibits in accordance with the number as

(Testimony of William Clair Blake.)

set out in the pre-trial order. Then we could refer to these documents as we take them up with the witness under that particular number. If the Court will just enter an order, I mean, admitting them all in evidence.

Mr. Cline: Well, suppose we do this, and it won't take very long. Would this be agreeable to the Court and counsel, that right now we go through these——

The Court: Anything will be agreeable to the Court. I will join you gentlemen if you agree on whatever you want to do.

Mr. Cline: Yes. [11]

The Court: And I will do the best I can.

Mr. Cline: Then we would offer as a joint exhibit for both sides the contract numbered MSTTS-235, dated February 10, 1950, which is the master contract that I have referred to.

The Court: That you have been examining the witness on?

Mr. Cline: No, this is——

The Court: Now we have had an examination of this witness on what contract is this?

Mr. Hogan: The specifications.

Mr. Cline: On the specifications and bid.

The Court: That is what I want.

Mr. Cline: If I could amplify in this way, your Honor, if I can amplify it—before they are eligible to bid and before they can be accepted as a Government contractor for government work, they have

(Testimony of William Clair Blake.)

to join in the signing of what is called a master contract that applies to all contractors.

The Court: I understand.

Mr. Cline: And that, I haven't examined the witness on that, but it is in evidence because we do rely on it and I guess the Government relies on it too.

But after some months, after that master contract was signed, then the Government called for bids on five lifeboats. I have just examined this witness, Mr. Blake, in reference to the Government's invitation to bid, which included the specifications; and then also in connection with the bid itself, [12] which they put in. And we hadn't—I didn't in connection with Mr. Blake directly refer to the contract, because it is admitted on both sides that they did.

The Court: Pass the contract up that you are examining him on. What is that?

Mr. Cline: Where are the specifications?

The Court: Here, here's the copy.

The Witness: You have got that.

Mr. Cline: Oh, is that the copy you have?

The Witness: Yes.

The Court: Is that the duplicate?

The Witness: No, this thing here, this is the wrong one.

Mr. Cline: This, may it please the Court, is a duplicate copy of the original, or one—I guess the the original is—I guess that was the one that was originally in evidence, isn't it, Mr. Hogan?

Anyway, we admit that this is a duplicate copy

(Testimony of William Clair Blake.)

of the specifications of the five lifeboats that were up for repair.

The Court: Now you show him that; what is that?

Mr. Cline: And this is a document, the invitation or proposal calling for bids to do the work specified in that document, and then attached to it is a carbon copy of this exact bid for doing the work, and as this witness has testified, the document there, the specifications in addition to having general language about, in the preamble, about doing [13] whatever may be necessary, then they set forth Category A.

The Court: I understand.

Mr. Cline: And their bid—I have examined this witness with reference to their bid, which only is Category A.

The Court: And what is this document?

Mr. Cline: This is their carbon copy of their exact bid.

The Court: Where is the exact bid?

Mr. Hogan: It's Exhibit 4 in evidence.

(Respondent's Exhibit No. 5, Pre-trial Order.) (Also Respondent's Exhibit H—Request for Admission of Facts and Genuineness of Documents.) [14-A]

The Court: Pass it up. I just want to familiarize myself with it, that's all. Do you have it?

The Clerk: I don't know which one it is, your

(Testimony of William Clair Blake.)

Honor. I have two documents here and that's replete with attachments, here.

Mr. Cline: Well, I think maybe we had better, probably, just be a lot simpler to do this in the ordinary fashion, perhaps, and Mr.—

The Court: I could make a pretense I fully understand this, but we are discussing a document and when you examine the witness on it, I want to get the feel of it myself.

Mr. Cline: That's right. I think we had better do this a little more slowly and without—

Q. (By Mr. Cline): Now Mr. Blake, did your firm, the Triple A Machine Shop, Inc., sign a general master contract with the Government covering ship repair generally? A. Yes, sir. [14]

Q. That contract did not refer to any particular job, did it? A. No, sir.

Q. The master contract was an over-all contract that would govern your responsibility and the Government's, if you later got any contracts with the Government for ship repairs, is that right?

A. That's right.

Q. I will show you here a document which says, "Contract MSTS-235," dated February 10, 1950, and ask you if this is the contract that was signed by your firm and the Government for ship repair?

A. Yes, sir.

Mr. Cline: We would ask this be introduced in evidence as joint Exhibit No. 1.

(Respondent's Exhibit No. 1, Pre-trial

(Testimony of William Clair Blake.)

Order.) (Also Respondent's Exhibit A—Request for Admission of Facts and Genuineness of Documents.) [15-A]

The Court: Let it be admitted and marked.

Q. (By Mr. Cline): Now then, Mr. Blake, I had asked you some questions and asked you with reference—

The Clerk: Joint Exhibit No. 1 admitted and filed in evidence.

(Whereupon Contract dated 2/10/50, described above, was received in evidence and marked Joint Exhibit No. 1.)

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### JOINT EXHIBIT No. 1

(Heretofore Printed at Pages 25 to 33 of this Record.)

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Mr. Cline (Continuing): To a job for the repair of five lifeboats. I will show you again the documents that [15] we referred to a few minutes ago, and when you testified that the respondent Government had furnished your firm with the specifications and invitation to bid, the specifications were in the form, this is the copy that you got?

A. Yes, that's right.

Mr. Cline: Then we will ask that the bid or the specifications for the five lifeboats' repair be introduced as a Joint Exhibit No. 2,



(Testimony of William Clair Blake.)

(Respondent's Exhibit No. 2, Pre-trial Order.) (Also Respondent's Exhibits B and C—Request for Admission of Facts and Genuineness of Documents.) [16-A]

Now, let's see if we can find——

The Court: Let it be admitted and marked next in order.

Mr. Cline: This is the specifications.

The Clerk: Joint Exhibit No. 2 admitted and filed in evidence.

(Whereupon specifications referred to above were received in evidence and marked Joint Exhibit No. 2.)

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JOINT EXHIBIT No. 2

(Hertofore printed at pages 34 to 50 of this record.)

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Q. (By Mr. Cline : And then I showed you a proposal or invitation to bid on this five lifeboat job, and I will show you here from the file what appears to be the invitation to bid on five lifeboats, invitation being dated September 21, 1950, and consisting of five pages, and ask you if that is the proposal or invitation to bid that you received from the respondent in this matter in reference to the repair of the five lifeboats.           A. Yes, sir.

(Testimony of William Clair Blake.)

Mr. Cline: We would ask that this be introduced in [16] evidence as Joint Exhibit No. 3.

(Respondent's Exhibit No. 4, Pre-trial Order.) (Also Respondent's Exhibit G—Request for Admission of Facts and Genuineness of Documents.) [17-A]

The Court: Let it be admitted and marked next in order.

The Clerk: Joint Exhibit No. 3.

(Whereupon Invitation to Bid dated 9/21/50, referred to and identified above, was received in evidence and marked Joint Exhibit No. 3.)

Mr. Hogan: What was No. 2?

Mr. Cline: I beg pardon?

Mr. Hogan: What was No. 2?

Mr. Cline: No. 2 was the specifications, the contract was 1, the specifications were 2, invitation to bid is 3.

Mr. Hogan: Very well.

Q. (By Mr. Cline): Now, I call your attention and I examined you in reference to the bid that you submitted on this particular job for repair of the five lifeboats. A. Yes.

Q. And this document here that I show you, the same one I examined you about—that is your bid?

A. Yes, sir.

The Court: Dated—

Q. (By Mr. Cline): This bid being dated September 29, 1950, and being for repair—

(Testimony of William Clair Blake.)

The Court: Bid No. P51-64, Triple A Machine Shop, Inc., libelant herein, submitted his bid for repair of five lifeboats for a total price of [17] \$3,775.

Mr. Cline: That's right, your Honor. That's it.

The Court: All right.

Mr. Cline: We will offer this in evidence as Exhibit No. 4.

(Respondent's Exhibit No. 5, Pre-trial Order). (Also Respondent's Exhibit H—Request for Admission of Facts and Genuineness of Documents.) [18-A]

The Court: It may be admitted as next in order.

The Clerk: Joint Exhibit No. 4 admitted and filed in evidence.

(Whereupon Bid dated 9/29/50, referred to above, was received in evidence and marked Joint Exhibit No. 4.)

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JOINT EXHIBIT No. 4

(Hertofore printed at pages 58 to 60 of this record.)

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Cross-Examination

By Mr. Hogan:

Q. Mr. Blake, you testified that you were a marine engineer, is that correct?      A. Yes, sir.

(Testimony of William Clair Blake.)

Q. What qualifications do you have as a marine engineer?      A. I am a licensed——

Mr. Cline: Well, I object to it as incompetent, irrelevant and immaterial. We are not here involved in engineering problems.

The Court: Well, this a preliminary question. He may answer.

Mr. Cline: Okay.

A. I am a licensed marine engineer by the United States Coast Guard as a chief engineer on ocean-going vessels of any gross tons, any [18] ocean.

Also I am a Commander in the United States Naval Reserve. I have been a chief engineer of many naval vessels.

Q. (By Mr. Hogan): Have you had experience in ship construction work?      A. Yes, sir.

Q. How long have you been with Triple A?

A. Four and a half years, sir.

Q. Where had you had your experience in ship construction work?

A. Triple A Machine Shop, plus during the war I was at the Long Beach Naval Shipyard and with the Army Transportation Corps in San Francisco, when the war was over in conversions and to numerous repairs.

Q. Now you testified, I believe, that your work at Triple A involved the management, bidding, estimating and so forth?      A. Yes, sir.

Q. Further, that you inspected these particular lifeboats?      A. Yes, sir.

(Testimony of William Clair Blake.)

Q. You inspected them at Oakland?

A. Oakland Army Base, that was.

Q. Now what was their condition when you inspected them. How were they located?

A. They were sitting over by a little house at the Oakland Army Base. There's a little building, there was a crane there where the man used to hang out. It was right alongside of [19] them. I climbed up inside the boats——

The Court: In or out of water, sir?

Q. (By Mr. Hogan): They were in dry storage, in other words? A. Yes.

Q. Now did you have any trouble identifying those boats?

A. No, we asked the man. Fact is, I think at that time we had to go to the Provost Marshal and we asked the man; they sent us through the—into that storage over there, and we reported to a watchman that had a house there.

Q. Well, the boats that you examined are the boats under discussion here, is that right?

A. Yes, sir, pretty sure.

Q. Those are the boats upon which you reported to your superiors? A. Yes, sir.

Q. Now did you make any reports to your superior?

A. No, I came back with the specifications and sat down and made the bid. It is my writing on the bid.

(Testimony of William Clair Blake.)

Q. Did you make any notes while you were over there?

A. Only what's on the specification. I don't recall.

Q. Did you make any notes in your own handwriting?

A. Yes, sir, the specifications are my writing on there.

Q. Are these the specifications?

A. Yes, sir.

Q. Where is your writing on there? [20]

A. These aren't—that isn't my writing.

Mr. Hogan: May I have the Court's copy of the specifications, please? It must be here somewhere.

The Witness: Mr. Cline has it.

Mr. Cline: Here's the copy with the writing on it if you want to refer to it.

Mr. Hogan: May I see that copy?

Q. Now, will you show me the writing on there in your own handwriting that constituted your notes on the repairs?

A. That's my writing with the money. Here's—those lines are mine; I can tell. That's my writing. That's my writing (indicating), that's my writing, that's all my writing there.

That's mine. All this is my writing, sir, "Provision tanks N.G.," all this is my writing.

Q. Those constitute all of the notes which you made relative to these repairs? A. Yes, sir.

Mr. Hogan: Your Honor, I don't know whether the one in evidence is an exact copy of this, but you may want to look at those.

(Testimony of William Clair Blake.)

The Court: Is this the one that I suggested might go into evidence?

Mr. Cline: It is in evidence, your Honor, as Exhibit No. 2.

(Respondent's Exhibit No. 2, Pre-trial Order. Also Respondent's Exhibits B and C—Request for Admission of Facts and Genuineness of Documents.) [21-A]

The Clerk: This is the one right here that is in evidence. [21] This is the one right here.

Mr. Hogan: But it doesn't contain those penciled notes on it. This is the original which he had.

The Court: Do you offer it in evidence?

Q. (By Mr. Hogan): Is this the set of specifications that you used in examining the lifeboats?

A. Yes, sir.

Q. Can you identify them as such?

A. Yes, sir; I took that over to Oakland with me. It is my writing.

Mr. Hogan: I see. Then, if the Court please, at this time I will offer this document, Specification No. MST5 P51-64, dated 20 September, 1950, into evidence.

The Court: Let it be admitted and marked.

The Clerk: Respondent's Exhibit A admitted and marked in evidence.

(Whereupon copy of Specifications identified above was received in evidence and marked Respondent's Exhibit No. A.)

(Testimony of William Clair Blake.)

RESPONDENT'S EXHIBIT A

[Respondent's Ex. A is identical to Ex. C attached to the Answer set forth at pages 36 to 42.]

Mr. Hogan: Would the Court desire to see this now?

The Court: You may pass it up.

(Examining.)

Q. (By Mr. Hogan): You made no further notes? A. No, sir.

Q. No further breakdown? [22]

A. No, sir.

Q. Or anything relative to the repairs, than the notes which you have on there?

A. That's all, sir.

Q. Now, on the basis of those notes you made this bid?

Mr. Cline: I object to it as assuming something not in evidence. He didn't say on the basis—this is all he had, it is all he had on the notes.

He had a lot of matters in mind when he checked over the boats. I object to the question.

The Court: Read the question, Mr. Reporter.

(Record read.)

The Court: He may answer. Objection overruled.

The Witness: The question was——



(Testimony of William Clair Blake.)

Mr. Hogan: Would you read the question again, Mr. Reporter?

(Record reread.)

A. No; also what I kept in my mind. I didn't write down everything. What I saw and what I had in my mind, I made my bid, plus discussing it with my associates. [23]

Mr. Hogan: Now, if the Court please, I have here a letter from Mr. J. Thaddeus Cline, to the Department of the Navy, Military Sea Transportation Service, listed in the pre-trial order as Item 2 under libelant's pre-trial exhibits. This document has been admitted by the respondent as being genuine and I assume that we can consider that it is now in evidence and I ask the Court that it be marked as Joint Exhibit number 14.

(Respondent's Exhibit B in evidence; also Libelant's Exhibit No. 2, Pre-trial [24-A] Order.)

The Court: Exhibit 14, dated when?

Mr. Hogan: It is a letter from Mr. J. Thaddeus Cline, dated November 14, 1951, addressed to the Department of the Navy, Military Sea Transportation Service.

The Court: Let it be admitted and marked next in order.

Mr. Cline: Then following the procedure that we started, may I ask that the letter be withdrawn from wherever it is now and taken out and separately

(Testimony of William Clair Blake.)

marked, because I can see we are going to get into considerable confusion.

(Thereupon discussion between Court and counsel as to procedure to be followed in the marking of exhibits.)

(Thereupon letter from J. Thaddeus Cline to Department of the Navy, Military Sea Transportation Service, dated November 14, 1951, received in evidence and marked Respondent's Exhibit B.)

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#### RESPONDENT'S EXHIBIT B

[Respondent's Exhibit B is identical to Ex. A attached to Libelant's Request for Admission, etc., set forth at pages 80 to 84.] [24]

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Q. (By Mr. Hogan): You have had experience prior to the experience with these particular five lifeboats here in inspecting lifeboats for the purpose of ascertaining repairs required?

A. Yes, sir.

Q. These weren't the first ones?

A. No, sir.

Q. And you are thoroughly familiar with the construction of these lifeboats and where the parts are and so forth?

A. Reasonably, yes, sir.

Q. Well, you inspected them, did you not?

A. Yes, that is right, sir.

(Testimony of William Clair Blake.)

Q. Presumably they have confidence in you?

A. Well——

Q. I want you to examine those items that are listed there. Now, relative to Item number one, 298 square feet of shell plate, I believe that you testified that all of these items that are supposedly extra repairs, were not visible, is that correct?

A. That is right, sir.

Q. What is the shell plate on the lifeboat?

A. It is the side of the boat.

Q. Couldn't you see the side of the boat?

A. The exterior of the boat was in very good condition. You could not see the interior of the [25] boat.

Q. Didn't you get into them? You said you climbed into them.

A. You couldn't see behind the tanks. The same as those chairs, if they were solid chairs, you couldn't see in behind them.

Q. Well, you are a marine engineer, are you not?

A. That's right, sir.

Q. You say that you inspected prior lifeboats for your Company?           A. Yes, sir.

Q. What is the usual condition of air tanks, that sort of thing, when they come out of the lifeboat, that is, in open storage?

A. Well, if the tanks have been renewed in the past year—be up to Coast Guard rules—they are in good shape.

Q. Well, had these been?

(Testimony of William Clair Blake.)

A. I don't know. There is no indication in the specifications.

Q. Well, would it have been apparent to you from observation whether they had been renewed within the last year?

A. No, sir, because the paint job—the boats had been painted—sitting in open storage—and the boats had been well preserved but you couldn't see.

Q. If there were any rust, you couldn't see the rust?

A. No, sir, not even behind the tanks.

Q. Well, what is the usual condition of the hull behind the tanks where there is metal to metal? [26]

A. Well, sometimes it is in good shape and sometimes it is in poor shape. It is actually not metal to metal.

Q. Well, is it something that you can anticipate?

A. No, sir. Not unless you can see it.

Q. You said sometimes it is and sometimes it isn't. If you are inspecting, can't you anticipate what that condition would be?

A. No, sir. You would have to know. You would have to look at it.

Q. I know. But now you are getting together data here for submission to your employers for the purposes of bidding on a contract for repairs—

A. Only under—

Q. Can't you take that into consideration?

A. Well, sir, you ask me to bid on the specifications. The specifications under the category A said to overhaul the motor. That's all it said. It

(Testimony of William Clair Blake.)

didn't say to look at the tanks. Although when I got up in the body I could look—the body was apparently in very good condition because it was well painted. You can't take the tanks out. They would have you in a——

Q. Now, I show you Joint Exhibit Number 2, (Respondent's Exhibit No. 2, Pre-trial Order.) (Also Respondent's Exhibits B and C—Request for Admission of Facts and Genuineness of [27-A] Documents.) the specifications for repairs. Did you have this complete document with you?

A. Yes, sir.

Q. I ask you to read the opening paragraph on those [27] specifications.

A. Yes, sir. (Reading.)

Q. Now, were you aware of that clause originally? A. Yes, sir.

Q. At the time you made this inspection?

A. Yes, sir.

Q. And what is the next sentence?

A. (Reading.)

Q. Were you aware of that when you made this inspection? A. Yes.

The Court: Take a recess for a few minutes.

(Short recess taken.)

Mr. Hogan: If the Court please, at this time I would like to make inquiry of counsel as to whether they will stipulate to the introduction in evidence of the schematic drawings that I have here of a lifeboat of this type.

(Testimony of William Clair Blake.)

The Court: Very well.

Mr. Cline: I think there are two kinds, aren't there—two different sizes?

(Discussion between counsel.)

Mr. Hogan: You are not willing to stipulate?

Mr. Cline: Well, I don't know.

(Discussion between counsel.)

Mr. Cline: I couldn't stipulate to that.

Q. (By Mr. Hogan): Now, directing your attention then, Mr. [28] Blake, to this letter of November 14, 1951, items of repairs set out therein. Item number 2 is listed, "All floors in four lifeboats."

What is the floor in the lifeboat?

A. The floor is the portion of the lifeboat that runs horizontally and it is a formed piece of metal that the wood sits on, and also acts as a straightening member of the body.

Q. I see. Now, are those floors visible?

A. No, sir.

Q. If you get down inside the boat you can't see them at all?

A. Oh, I guess if you took some tanks out of the way or some gear out of the way you—you couldn't see them—no, you couldn't see them to make a survey or examination of them, no. You could see them—put your finger down there and touch them maybe, but you couldn't, because it is in between floor boards.

Q. I see. Now, those floors are metal?

(Testimony of William Clair Blake.)

A. Yes, sir.

Q. Are they galvanized?                    A. Yes, sir.

Q. Now, in inspecting lifeboats for your people from time to time—and you have indicated that you have inspected a good many, is that correct? [29]

A. Yes, sir.

Q. With what frequency do you find the floors in those lifeboats rusted?

A. Well, it depends on the condition. I have found them in very good condition.

Q. I know it depends upon the condition. I am asking you the frequency.

Mr. Cline: Well, just a minute. May it please the Court, I haven't made any objection up to this point. I didn't realize it was going to proceed along, but I do object to this line of questioning as being wholly incompetent, irrelevant and immaterial, not within the issues of the case here. Their own evidence shows that this libelant bid on category A, and category A only. The bid was accepted. Now all this other talk about the rest of these lifeboats, and so on, has no bearing on the case here.

(Further argument and answer on the objection.)

The Court: The objection will be overruled. Let us proceed.

Q. (By Mr. Hogan): Now, will you answer my last question, Mr. Blake?

A. Will you state the question again. I don't recall it.

(Testimony of William Clair Blake.)

Q. I asked you what—with what frequency you found these flaws in lifeboats, rusted floors? [30]

A. Not——

Q. In the numerous times you have inspected them?

A. Not too often. You don't find them too often if the boat is taken care of properly and cleaned out.

Q. How many times approximately?

A. I don't know.

Q. Say out of ten inspections or ten lifeboats?

A. Well, we had a boat with—we had a ship with 22 lifeboats on the General Anderson, and I would say that ten apparently had new floors in them.

Q. All right. A. Maybe less.

Q. Those lifeboats on the—what did you say, the General Anderson? A. Yes, sir.

Q. Were they covered, did they have tarpaulins over them? A. That is right, sir.

Q. Did these in the Oakland Army Base have tarpaulins over them? A. No, sir.

Q. They were open and exposed, weren't they?

A. One thing, the General Anderson's boats, I don't know if they had tarps over them.

Q. Let's not get into the General Anderson's boats. You said they did and that's good [31] enough.

A. Well, I don't——

Q. In any event, the ones in Oakland were exposed?

A. The ones I saw were exposed in the open.



(Testimony of William Clair Blake.)

Q. How were they stowed, bottom side up or top side up?      A. Top side up.

Q. So they could fill with water, could they not, if it rained?      A. That is right, sir.

Q. Now, going to item 3, what are the margin boards in a lifeboat?

A. That's an item here, "Approximately 270 square feet of number one lumber for margin board." That's the boards that go around the shell of the lifeboat and they act as a straightening member or a seat or for stowing water tanks or such.

Q. What kind of lumber is it made of?

A. Well, Douglas fir, most of the time.

Q. Is any part of it metal, or is it all lumber?

A. Sometimes—well, it depends on the boat. I have seen them metal, I have seen them wood.

Q. Well, where is it here, the bottom, near the side, the gunwale?      A. No, the side.

Q. Can you see it?

A. That is right, sir. [32]

Q. It is visible?      A. Yes, sir.

Q. Do you recall what the condition of the margin boards were in these lifeboats?

A. No, sir.

Q. Didn't you look at them?

A. Under the specification that I bid on—

Q. I am not asking about that. I am asking you whether you saw these margin boards.

A. Well, I climbed in the boat. I looked—I probably looked at the whole boat but didn't specifically

(Testimony of William Clair Blake.)

look at the margin boards. Apparently they were all right.

Q. Well, you could see them if you had looked?

A. If I had looked at them I could have seen them.

Q. All right. Now, what are the "Hand gear propelling sockets"?

A. Hand gear propelling sockets?

Q. Yes.

A. Well, they are the—these types of boats are not oar propelled but are hand propelled and the thing sits in the (indicating)——

Q. Well, what is it, an oar that goes through the bottom of the boat?

A. No, sir; it is—the people in the boat—it is what they call a self-propelled lifeboat. [33]

Q. Yes?

A. And this is a board that people grab to work it—it is a socket—it is a metal socket.

Q. And what do they do, they pull back and forth on this?

A. That is right, sir, and it makes it propel——

Q. Is the socket something that actually the propelling unit fits into?      A. That is right, sir.

Q. What is that made out of?

A. Metal, I assume. It would be out of aluminum.

Q. Where is it locked? Is it locked in the bottom of the boat?      A. Yes, sir.

Q. Is there any flooring in these lifeboats, in the floors that we have been discussing, but planking?

A. Yes, sir.

(Testimony of William Clair Blake.)

Q. Is it solid planking? A. No, sir.

Q. You can see in between?

A. That is right—put your finger in between it. It is pretty hard to see.

Q. Can you reach down through it?

A. No, sir.

Q. Can you put a flashlight under it? [34]

A. You could, but you could only see where the flashlight went. You couldn't see this way or this way.

Q. Well, could you see these propelling sockets?

A. Yes, you could see them.

Q. Well, did you look at them?

A. No, sir. I don't recall.

Q. Now, the next item, these galvanized iron tank straps. What are they?

A. Galvanized iron tank straps?

Q. Yes.

A. Well, this is what puts the tanks—the tanks are removable tanks in the body.

Q. What tanks, what are they?

A. What tanks?

Q. The air tanks or provision tanks?

A. Yes. And——

Q. These straps strap the tanks to the boat?

A. That's right, sir.

Q. Well, what do they do? Do they attach to the sides of the boat?

A. To the wooden—this part of the boat, yes, sir.

Q. Are they—— A. They are screwed in.

(Testimony of William Clair Blake.)

Q. Are they visible? A. Some are. [35]

Q. Well, how many?

A. Oh, I don't know. You can see the front of the strap but you couldn't see the strap that goes under the second tank or the bottom of a tank because it is hidden.

Q. Well, could you see fifty per cent of them?

A. No.

Mr. Cline: Object to that—

Q. (By Mr. Hogan): You couldn't see fifty per cent? A. It depends upon the lifeboat, too.

Mr. Cline: Just a minute.

A. —

Q. (By Mr. Hogan): Well, you could see some of them, couldn't you?

A. You could see some of them most of the time.

Q. If you inspected them could you tell what their condition was by looking at them?

A. No, sir.

Q. Why?

A. Because where it was painted it was in good shape, but underneath the tank or where it was screwed in the wood might have been rotten or the Coast Guard inspector or the M.S.T.S. inspector mightn't pass it. It might be up to what he thinks is okay. He might think it is all right.

Q. Now, among marine inspectors, is there any test to be given [36] for rust in metal?

A. Among marine inspectors?

Q. Yes.

A. Well, you gauge the metal by either drilling

(Testimony of William Clair Blake.)

or beating. They have a new metal gauge that will gauge the metal.

Q. Can you also by tapping with a hammer?

A. That is one way that they do.

Q. Did you make any drill tests either on the shell plates or on the floor boards or on the tank straps?

A. You couldn't drill. You're in the field where the boat is—all you could do—if you even raised a hammer, you're destroying Government property. Our job was to bid on only what was specified in the specifications. [37]

Q. How about these aluminum tank straps?

A. What about them?

Q. Well, didn't you see those?

A. I have it on other boats where the aluminum is out—where you can see it is painted, but underneath the tanks you can't see it.

Q. All right. How about these "thwarts"? What are these thwarts?

A. That is what you sit on. That's the seats.

Q. What are they made out of?

A. Made out of wood, some are made out of metal, some aluminum.

Q. Are they visible?           A. They are.

Q. Can you see them?        A. Yes, sir.

Q. Can you observe—can you from observing them get an over-all idea of their condition?

A. No, sir.

Q. Why?

(Testimony of William Clair Blake.)

A. Because if the boat is well painted, and it apparently had been repaired, it looks good and taken care of—but that may not be satisfactory to the MSTs or the Coast Guard, they may want to renew them. You can't tell. Visibly it may be [38] perfect.

Q. You can reasonably anticipate, though, on the basis of and from your experience, can't you?

A. No, you can't.

Q. Well, how many lifeboats have you inspected? Give me an estimate.

A. Well, you mean since I have been in business or——

Q. Any time.

A. Oh, I have inspected lots of lifeboats. I won't say how many. I would say hundreds of them. Let's put it that way.

Q. All right. Now——

A. I'm not a specialist at it.

Q. What are the "life lines" and "floats on boats"?

A. What's that, sir?

Q. Life lines and floats?

A. Well, alongside the side of the boat, in case the lifeboat should fill with water or turn upside down during launching, they have a safety factor that a life line goes around a boat, and that is—it has a—it has a little wooden knot that will float so that a man can grab it so in case the boat is flooded with water, were the lifeboat submerged, and it will only submerge so deep, a man can grab them and still hang on.

(Testimony of William Clair Blake.)

Q. Are they visible? A. Oh, yes.

Q. You can see them; you can inspect them?

A. You could. [39]

Q. Can you tell from looking at them? I mean as a marine surveyor, what their condition is?

A. Well, I could and I couldn't, because in my opinion they may be in good shape but to the MSTs inspector or the Coast Guard, he wouldn't pass them, he wants something new.

Q. Well, isn't that a calculated risk that you have to take?

A. No, because it doesn't specify to say that work, unless you are told to renew it. You bid——

Q. Will you tell me what a "slash railing" is?

A. Yes. The slash railing is in the forward end of the boat or it could be in the after end of the boat, where you lash down the sails or the gear that is in the boat.

Q. Is that outside or inside so that you can't see it? A. You could see it.

Q. If it were affected by the weather, cracked, you could see that?

A. If you went looking for it, yes.

Q. And presumably the items listed here of 24 hanging clips for slash railing, 24 sockets for slash railing, are all parts that go on the slash railing?

A. That is right, sir.

Q. And they are visible?

A. Yes. You lash the line through it.

Q. And where they are visible, you can see them?

A. That's right. [40]

(Testimony of William Clair Blake.)

Q. You can inspect them?

A. That is right.

Q. What are these two plates and doublers in the last item?

A. Well, I suppose they are just what they say, they are two plates and two doublers.

Q. Well, what part of a lifeboat are they?

A. Well, I mean, you can have doublers on the bottom or at the forward end of the board.

Q. Well, of a shape pieces? What are they made of?

A. Oh——

Q. Describe them. Just describe these doubling plates.

A. That we installed on the boat, that we put on the boat. I don't know where we installed them.

Q. You don't know? Can you tell from looking at this letter where they were installed?

A. I have never seen that letter.

Q. Well, do you recall the replacement or the renewal of the two plates and two doublers on there?

A. No, I don't. I didn't handle this job after it came into my shipyard.

Q. You don't know how that got on there at all?

A. Well, sure, it was probably done—it was probably ordered by the Government or the inspector to do this work, yes. But where they are at or where it was renewed, I don't recall where, no, [41] sir.

Q. Now, from time to time in your work—in your testimony you have referred to certain requirements, things that you are required to do from



(Testimony of William Clair Blake.)

time to time by either the Navy inspector or the Coast Guard inspector, is that right?

A. Yes, sir.

Q. Do you normally work closely with those people?

A. Well, sure.

Q. On a job of this type?

A. If they are called in on it, yes, sir.

Q. Now, if you are instructed to accomplish certain repairs or to do certain things relative to making repairs by the Navy inspector or by the Coast Guard inspector, do you do that?

A. If it is on a field order, yes, sir.

Q. If it is on a field order?

A. Well, we bid on lifeboats to do what is specified in the specifications.

Q. I know what that is. I know what you are required to do.

A. Well, that's what we do.

Q. I am just asking you if—

A. Well, the Navy inspector and the Coast Guard inspector work together, and the Navy inspector tells us what to do. He gives us an order or he says it is in the specifications.

Q. Now, from your experience, you know that there is going to be an inspector on these jobs, don't you?

A. Yes—well, we know that there will be a Navy inspector [42] but we don't know there will be a Coast Guard inspector on there.

Q. All right. Now, were you required on this

(Testimony of William Clair Blake.)

particular job to do certain work by the Navy inspector and by the Coast Guard inspector?

A. Well, we were required to do work by the Navy inspector now but not by the Coast Guard inspector.

Q. All right. But you knew that this work is subject to inspection?      A. Oh, yes.

Q. And approval?

A. The work that is specified, yes.

Q. And you know that it has to conform, don't you, to certain specifications?

A. Only what you bid on.

Q. I mean with respect to the lifeboat and what goes in it?

A. Well, yes; good marine practice.

Q. Well, not only practice, it is the law, isn't it?

A. Yes.

Q. On the basis of these specifications, and I don't know whether I asked you to read this sentence, but I will ask you to read it now, in the specifications——

Mr. Cline: What sentence are you referring to?

Mr. Hogan: I will advise him.

Mr. Cline: Well, I have a right to know the question you [43] are asking the witness.

Mr. Hogan: I am asking him to read that sentence, the fourth sentence (referring to Respondent's Exhibit A, page 2, fourth paragraph).

(Respondent's Exhibit No. 2, Pre-trial Order.  
Also Respondent's Exhibits B and C—Request

(Testimony of William Clair Blake.)

for Admission of Facts and Genuineness of Documents.) [44-A]

Mr. Cline: Just a moment. Is there some reason you don't want to tell me what you are calling the witness' attention to? I object to——

Mr. Hogan: None whatsoever.

Mr. Cline: Well, may it please the Court, I will ask the witness be instructed not to proceed with this until I know what——

The Court: What page is this?

Mr. Hogan: They are in evidence, the specifications. You have a copy of them.

Mr. Cline: For some reason Mr. Hogan won't tell me what he is calling to the attention of the witness.

Mr. Hogan: Here, you may look at it.

Mr. Cline: All right. What are you calling his attention to?

Mr. Hogan: Sentence number four on the page.

Mr. Cline: That is the question you asked him to read and which he read into evidence a few minutes ago. Object to it as already asked and answered.

The Court: Read it, in the interests of time. Let's get through. [44]

Mr. Hogan: If I did, I apologize, your Honor. It slips my mind as to whether he read it.

The Court: Read it.

The Witness: The fourth?

Mr. Hogan: That is correct.

A. (Reading): "All work shall be subject to in-

(Testimony of William Clair Blake.)

spection and approval by the U. S. Coast Guard and the U. S. Navy inspector assigned."

The Court: That wasn't read into the record. It does not disclose it.

Mr. Hogan: It does now, your Honor.

The Court: It does now. It wasn't read from.

Mr. Cline: I understood it to be.

The Court: Well, I will stand corrected. The reporter is here. I was about to ask this question myself, whether during the course of this work it was inspected. This is the first time that I have——

Mr. Cline: Yes——

The Court: All right. Let's proceed, gentlemen.

Q. (By Mr. Hogan): Now, Mr. Blake, I presume that you are familiar with this master ship repair contract, the Triple A has with MSTs; am I correct in that assumption?      A. Yes.

Q. I will show you Article 5-J, page 11, of this contract, and ask you if you will read the first sentence for the purposes [45] of the record?

A. (Reading): "The Government does not guarantee the correctness of the dimensions, sizes and shapes set forth in any job order, sketches, drawings, plans or specifications prepared or furnished by the Government"——

Mr. Hogan: Thank you. That's all, your Honor.

(Testimony of William Clair Blake.)

Redirect Examination

By Mr. Cline:

Q. Well, Mr. Blake, you have just been called upon to read a provision in the specifications that your work had to be—the work would be subject to the inspection of the Coast Guard—the job that you have been testifying about, that is, 5 lifeboats—they are inspected by the Coast Guard?

A. Yes, sir.

Q. The job you did was accepted by the Coast Guard, accepted by the Navy?

A. The work that we did on them was accepted and passed by the Coast Guard.

Q. And the other work, the extra work, was that also accepted by the Navy and the Coast Guard?

A. That is right, sir.

Q. Every bit of work that you have testified to here had been accepted and approved and passed by the Coast Guard and the Navy?

A. Yes, sir.

Q. Now, you have also been asked a question as to what you [46] do in the course of a job under a contract when you are told to do some certain work by the inspector. Under your contract you have to go ahead with whatever you are told to do, is that right?

A. That is right, sir.

Q. And that was done in this case, is that right?

A. Well, sir, we bid on this contract to do this "X" amount of work. The Coast Guard inspector and the Navy inspector came down and found this additional work that was not specified under Cate-

(Testimony of William Clair Blake.)

gory "A"; he requested an extra for the work and they took it up with—had a meeting at their office and came back and said, No, that we will discuss it later and that you will have to proceed with the work—we proceeded immediately with the work.

Q. That is, you could not hold up the job while——

A. No, sir.

Q. ——while you were discussing as to how much you were to be paid and so on?

A. No, sir. We proceeded with the work immediately because they needed the boats. Time is the essence in this business, so that you don't hold up ships that cost thousands of dollars a day. When they told us that it was either in dispute or that we should proceed, we proceeded with the work without question.

Q. Now, as I understand, the actual repair work is not handled by you personally, is that right? [47]

A. No, sir.

Q. Once the job, and particularly on these five lifeboats, are brought into your shop——

A. Yes, sir.

Q. ——that ends your responsibility except as to general firm management, is that right?

A. That is right, sir.

Q. And the work is then handled under whom?

A. That's right, sir; under Mr. Fell.

Q. Now, you were asked some questions on cross-examination about the lifeboats on the General Anderson. By reason of what happened in this particular case of these five lifeboats, did you follow

(Testimony of William Clair Blake.)

the same procedure in the General Anderson that you did in these lifeboats?

A. Yes, sir, we did. And the Navy came down because we had a little time——

Mr. Hogan: I object, your Honor.

The Court: The objection will be sustained.

Mr. Cline: I thought it had been opened up on cross-examination and we could follow it.

The Court: Not as to the condition of them, only the general question about how many were there.

Mr. Cline: Well, may I ask——

Mr. Hogan: We did not go into the question of the details on those lifeboats, and we are not interested in them, your Honor. [48]

Mr. Cline: But you have opened up the subject on cross-examination. I think I have a right to follow this up to ask him what was done in those cases. We want to show, and we think we have a right to——

The Court: What was done in those cases?

The Witness: You want me to answer?

The Court: Yes.

A. We got into a sort of a dispute that they wanted additional work done.

The Court: This is the evil of this thing.

Mr. Hogan: Yes, I object, your Honor.

The Court: Sustain the objection.

Mr. Cline: Well, you were asked on cross-examination as to whether you could tell in advance as to whether an inspector would or would not pass a part of a lifeboat.

(Testimony of William Clair Blake.)

A. That is right, sir.

Q. Now, was there on the General Anderson, in the lifeboats on the General Anderson, a great and extreme difference of opinion between the inspectors themselves?

A. Yes.

Mr. Hogan: I object, your Honor.

The Court: Objection sustained. Let it go out.

Mr. Hogan: I object to going into this aspect of the matter.

The Court: What is your—— [49]

The Witness: I'm sorry. You're waiting for me to answer?

The Court: No. But you looked rather surprised on my ruling. Didn't you?

The Witness: No. I thought you wanted me to answer and I was sitting here waiting. I'm sorry.

The Court: No. I'm a pretty good observer here. I have been running a long time.

The Witness: No, I thought you were waiting for me, and I was asleep.

The Court: No, I am waiting for you—I am here to observe your people. All right.

The Witness: I'm sorry.

Mr. Cline: Then, as I understand it then, Mr. Blake, in making your bid in this action that was accepted and is now in evidence, you considered and appraised what you felt would be the cost of the labor and material to do the job specified in category "A"?

A. Oh, yes, that's right. They came in——

Q. Nothing else.



(Testimony of William Clair Blake.)

A. They came in with all this additional work and we asked for an extra, and they said, no. But we said that we did not bid on anything except what was specified under category "A," that the general terms and conditions were instructions to us and that we felt that under category "A," [50] that's what our price was put on and that's what we bid on.

Q. And when you returned your bid to the Military Sea Transportation Service—you returned your bid to the Military Sea Transportation Service, did you?      A. That is right, sir.

Q. And you were generally notified that it was accepted?      A. Yes, sir.

Q. Now, was there any question raised by the Military Sea Transportation Service as to the fact that your bid specifically on its face showed it covered only category "A" items?

A. As specified, that is right, sir.

Q. Well, I say, was there any question raised by them as to your bid having—

A. No, sir—no, sir, they accepted our bid under category "A," and the boats were put in our custody, and we proceeded with repairs under category "A," and they tried to throw in these additional repairs.

Mr. Cline: I think that is all.

(Testimony of William Clair Blake.)

Recross-Examination

By Mr. Hogan:

Q. Mr. Blake, after the bid is accepted, the contract and so forth is let, based on your experience, with Triple A and M.S.T.S., what is the document that issues out of M.S.T.S. that puts the thing in operation, do you know? [51] A. Yes, sir.

Q. What is that called?

A. A job order. That doesn't come in until weeks later, sometimes a month later, after the job is done.

Q. It is part of the contract, though, isn't it?

A. The contract says that you will proceed on issuance of a job order but you don't get it—the administrative end of it doesn't go on for weeks or months.

Q. Nevertheless, the job order is part of the contract, isn't it, when it does issue?

A. Well, whatever is stated in there.

Q. Well, isn't it? A. Yes, sir.

Q. Would you recognize this job order?

A. Well, that is a job order issued by the government, yes, sir.

Q. Does it indicate to you where this job order relates to this particular contract?

Mr. Cline: What was that question again?

A. Well, it is a photostatic copy. I mean, we had done lots of lifeboat jobs. I will take your word.

Mr. Hogan: You have never seen it, Mr. Blake?

A. I have never seen it, I believe.

Mr. Hogan: I think that is all, your Honor.

(Testimony of William Clair Blake.)

The Court: Is that all from this witness? [52]

Mr. Cline: Yes, your Honor.

The Court: Step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Cline: Now, may it please the court, the libelant rests except as to the matter of clearing up the exhibits here, certain exhibits, which I would be glad to—in fact two of them—to read into evidence.

The Court: Very well.

Mr. Cline: If we may.

Referring to the letter that has been introduced in evidence, the letter from the Navy Department, Military Sea Transportation Service, Washington 25, D. C., dated October 22, 1951, and addressed to the libelant, subject—

Mr. Hogan: Which?

Mr. Cline: This is the letter of October 22, 1951, from the M.S.T.S. It is—let's see.

Mr. Hogan: Is that attached to your request for admissions of fact?

Mr. Cline: No. It is attached to yours.

Mr. Hogan: October 22?

Mr. Cline: Yes.

Mr. Hogan: That is attached to yours, I think, Exhibit B, your request for admissions of fact.

Mr. Cline: Oh, is that attached to mine? [53]

Mr. Hogan: Yes.

Mr. Cline: Well, then, I knew it was in evidence.

This letter is from the M.S.T.S., addressed to the libelant in this matter, and it is in reference to this particular contractual matter and in reference to the appeal that had been filed in Washington. It says:

“Gentlemen:

“Commander, Military Sea Transportation Service, Pacific, has forwarded to this office your claim in the amount of \$5,392.00 for additional compensation in connection with contract MST-235, job order number 10. Pertinent correspondence from your representative, Mr. J. Thaddeus Cline, indicates that you desire to appeal under Article 14 of subject specifications. However, there appears to be a question regarding the interpretation of specifications, which would seem to be more accurately covered by Article 5-(j).

“Kindly advise whether you desire to appeal these matters under Article 5(j) of subject specification, and whether you wish to submit further evidence to substantiate your claim.

“Yours very truly,

“W. H. von DREEL,

“Captain, USN, Director, Maintenance and Repair Division.”

And the reply to that letter, which is also in evidence, a letter from myself as attorney for the [54] libelant, dated November 14, 1951, addressed to the Department and the same reference and to the writer of the other letter:

“Dear Sirs:

“Your letter of October 22, 1951, addressed to Triple A Machine Shop, Inc., has been referred to the undersigned for reply.

“The said contractor had been advised by your local office that its claim should be handled as a dispute under Article 14 of the Master Contract. It was for this reason that the appeal referred to the said section.

“The suggestion contained in your said letter that the appeal might well be considered under Article 5(j) is sincerely appreciated. It is quite possible that the last mentioned section would give your office greater latitude in considering the merits of said contractor’s claim than you would have under Article 14.

“Instead of electing to appeal under one article or the other, it would seem more appropriate to appeal under both of said articles. This would surely enable your office to consider the said claim from all possible angles. You are, therefore, respectfully notified that said contractor does appeal under Article 14 and also under Article 5(j). [55]

“To assist your office in arriving at a just decision, a few pertinent facts will be briefly commented upon.

“Triple A Machine Shop, Inc., was the low bidder on the lifeboat job here in question. The said company submitted its bid on the specifications prepared by the Government. So far as was known to anyone or that could be ascertained from inspecting the

boats, the specifications completely covered all necessary repairs.

“In going ahead with their contract and in order to do the work set forth in the specifications, the tanks were removed. The Coast Guard and M.S.T.S. inspectors then came on the job and condemned certain plates and parts of the boats. Pursuant to a letter dated October 16, 1950, from the Office of Deputy Commander, Military Sea Transportation Service, Pacific, Triple A Machine Shop, Inc., was required to do the following specified extra work. There seems to be some error in referring to the charge for said extra work, in that your letter of October 22 refers to the figure of \$5,392. The extra work done, as aforesaid, is hereinafter listed with proper charge for each of the items, namely:”

And then we list several items, showing price after each one, [56] that have been referred to by Mr. Hogan, and then—or the items that have been referred to by Mr. Hogan, and then the total price, \$6,342.

“No one can dispute the fact that the contractor could not possibly have known that the above-listed parts were defective. Likewise, the Government could not have known that the boats required any repairs other than as expressly listed in the specifications. Even the inspectors could not have determined that additional work would be required until after the tanks had been removed by the contractor.

“It cannot be claimed that the Government knew of the existence of these extra defects; because if such were the case, then the failure to include the

same in the specifications would have amounted to a positive fraud and deception on the part of the Government.

“On the other hand, if the Government did not know of these defects that were hidden by the tanks, how can it now be claimed that the contractor could or should have known of their existence?

“Contracts of this kind should, in every instance, be fair, open and above board. Government prepared specifications should not be a trap for the unwary. A bid should always be a fair estimate of the value of [57] the labor and material required to effect a certain specified job. A bidder on a Government job should not be required to surmise, guess or gamble as to the nature and extent of the job in question.

“It is, therefore, respectfully urged that the appeal be sustained in favor of the contractor and that an order be made to pay said contractor the full reasonable value of said extra work.”

And then one other letter that is in evidence—does your Honor wish to take the adjournment?

The Court: Take the adjournment until two.

Mr. Cline: Thank you, your Honor.

(Thereupon a recess was taken until 2:00 o'clock p.m. this date.) [58]

Wednesday, 16 December, 1953, 2:00 P.M.

Mr. Cline: With the Court's indulgence, I would like to read a couple of other letters that are in evidence, read them in evidence, and Mr. Hogan first referred to a letter from Military Sea Transport, addressed to Triple A Machine Shop under date of October 16, 1950, being the letter asking certain additional work be done. This letter of October 16, 1950, is addressed to the libelant.

(Respondent's Exhibit No. 12, Pre-trial Order. Also Respondent's Exhibit L—Request for Admission of Facts and Genuineness of Documents.) [59-A]

(Whereupon counsel read the above-mentioned letter to the Court.)

And the reply to that letter, being a letter from myself as attorney for the libelant, dated October 20, 1950, and addressed to the Military Sea Transportation Service.

(Whereupon counsel read the above-mentioned letter to the Court.)

And then one further and final letter, and which is the letter of June 16, 1952, from the Department of Navy, Military Sea Transportation Service, in Washington, D. C., and addressed to the libelant in connection with the appeal that had been filed in Washington.

(Whereupon the letter above referred to was read to the Court.)



I would like to ask leave of the Court if I might recall Mr. Blake for a couple of further questions on redirect? [59]

The Court: You may.

Mr. Cline: Mr. Blake.

WILLIAM CLAIR BLAKE

recalled as a witness for the libelant, having been previously duly sworn, testified further as follows:

Further Redirect Examination

By Mr. Cline:

Q. Mr. Blake, when you were on the stand before and on cross-examination you were interrogated by Mr. Hogan as to the various items of additional work particularly as set forth in my letter of November 14? A. Yes, sir.

Q. Those items are the same items that make up the claim that we are now contesting here in court, is that right? A. Yes.

Q. That is referring to the shell plates and floors and other work you referred to?

A. That's right.

Q. Were any of those items included in your bid?

A. No, sir; they were not included in the bid, because they weren't specified to be repaired under category A.

Q. That's right. Now, you say that you saw the general specifications which included provision, in substance, that it was the intent of the parties to put the lifeboats in proper condition of repair, is that right? [60] A. Yes, sir.

(Testimony of William Clair Blake.)

Q. Now, is that the usual situation in repair work that the contractor who has the prime contract would be called upon to do any work that develops or it becomes apparent during the course of the job that needs to be done?

A. Yes, they issue you field orders and negotiate a price with you to proceed with the additional repairs that they specify.

Q. So that it was understood here that if you got the bid and after you started the job additional work developed, you could be required to do it?

A. Yes, sir.

Q. But no one requested you to put in a bid on any such additional work?

A. No, sir; only what was specified under the category A, that is what we bid on.

Mr. Cline: I think that is all.

#### Recross-Examination

By Mr. Hogan:

Q. It has been testified, Mr. Blake, that supplemental job orders were issued as was customary, I believe, jobs of this type, is that correct?

A. Field orders are issued.

Q. Job—— A. ——and supplemental——

Q. Supplemental. What is the purpose of [61] that?

A. To accomplish additional repairs and make a determination for payment.

Q. I see. Now, I show you again the specifications. That is, I believe, Joint Exhibit 2? (Respondent's Exhibit No. 2, Pre-trial Order.)

(Testimony of William Clair Blake.)

The Clerk: Yes.

Q. (By Mr. Hogan): And ask if you will, please, if you will read into the record the seventh sentence?

A. "Replacements of deteriorated tanks shall be accomplished only on a written field order."

Q. Was that supplemental field order issued in connection with the replacement of the tanks in this case? A. Yes, sir.

Q. Will you examine the specifications and tell me whether there is any provision in those specifications for the issuance of other field orders other than with respect to those air tanks?

A. I'll have to read it all.

Mr. Hogan: Well, the document speaks for itself.

Mr. Cline: Stipulated there is no such provision.

The Witness: Referring now——

Mr. Hogan: Stipulate there is no other provision?

Mr. Cline: That the only provision in there as to field order——

The Witness: Referring to what?

Q. (By Mr. Hogan): I am referring to this contract. [62]

A. Well, this, see, we bid on.

Q. Just referring to what you bid on—I am asking you if there is any other provision in there authorizing the issuance of a supplemental job order to cover any other work other than those air tanks as provided?

(Testimony of William Clair Blake.)

A. No, because this is all I bid on.

Mr. Hogan: That is all I want to know. Just answer the question. That is all, your Honor.

### Redirect Examination

By Mr. Cline:

Q. There is nothing in there anywhere that says if any additional work should develop being required by the inspector that that would be done for free here, is there?

A. No, sir; in your master contract provisions are made that any additional work will be negotiated by the Government at an equitable to the Government and to the contractor and you will be paid for it; only bid on work as specified.

The Court: Was that done here in this case?

The Witness: No, sir; the Government wouldn't pay us.

The Court: Why?

The Witness: Because we bid under items under this category A, give them a price of \$3,200, something like that, and we bid on that, and additional work came up and the Government said no, we won't give you a field order [63] for it, it is in the basic contract, and we said we feel we didn't bid on that, you couldn't see it.

The Court: Any further questions?

Mr. Hogan: No further questions.

The Court: Step down.

(Witness excused.)

Mr. Cline: Libelant rests, your Honor.

Mr. Hogan: Mr. Ames.

RAYMOND R. AMES

called as a witness on behalf of the defendant,  
sworn.

The Court: Your full name, please?

The Witness: Raymond R. Ames.

The Court: How do you spell your last name?

The Witness: A-m-e-s.

The Court: Where do you live?

The Witness: 841 Teresita Boulevard, San Francisco.

The Court: Your business or occupation?

The Witness: Head planner and estimator,  
M.S.T.S., Pacific.

The Court: Estimator for who?

The Witness: M.S.T.S., Pacific; Military Sea  
Transportation Service, Pacific.

The Court: How long have you been so engaged?

The Witness: 1950. [64]

The Court: 1950?

The Witness: 1950.

The Court: And what is the nature of your  
work?

The Witness: I am a head planner and estimator. I give out the work to the planners and estimators to make their inspections and write up specifications on work for the M.S.T.S.

The Court: You have been doing that kind of  
work since 1950?

The Witness: At M.S.T.S., Pacific.

(Testimony of Raymond R. Ames.)

The Court: Prior to that time?

The Witness: Prior to that time I was at the Long Beach Naval Shipyard for seven years.

The Court: In what capacity?

The Witness: Head planner and estimator for the Long Beach Naval Shipyard.

The Court: All right, take the witness.

### Direct Examination

By Mr. Hogan:

Q. Mr. Ames, I show you Joint Exhibit number 2 (Respondent's Exhibit No. 2, Pre-trial Order); (Also Respondent's Exhibits B and C—Request for Admission of Facts and Genuineness of [65-A] Documents), which are specifications for repairs of five lifeboats, ask you to examine them. Are you familiar with them? A. Yes.

Q. Were those specifications prepared under your supervision? [65] A. They were.

Q. And with your knowledge? A. Yes.

Q. Were they prepared in your office in September or October, 1950, under your supervision?

A. Yes.

Q. Now, did you have anything to do with letting the contract for these repairs?

A. No, sir, that was let by the contract section.

The Court: Speak up so the reporter can hear you. Who?

The Witness: By the contract section.

The Court: Contract section?

The Witness: Yes, sir.

(Testimony of Raymond R. Ames.)

Q. (By Mr. Hogan): Did you know in October who ultimately was awarded the contract?

A. Yes, sir.

Q. Who was awarded the contract?

A. Triple A Machine Shop.

Q. And that contract incorporated those specifications?

Mr. Cline: Objected to as calling for the opinion and conclusion of the witness.

The Court: If he knows he may answer.

A. Yes, this was part of the contract.

Q. (By Mr. Hogan): Now, I ask you to note in that document [66] certain specified items listed under category A, and what do those items represent, what was to be accomplished under those items?

A. All the work outlined in these specifications, plus any other work as outlined by the Coast Guard inspector.

Q. Now, did you have other classifications of work, such as classification B?

A. Not on this specification.

Q. Well, do you have such a classification?

A. There is, yes.

Q. Are there any in those specifications?

A. No, sir.

Q. Now, do you know why not?

Mr. Cline: Objected to as calling for the opinion and conclusion of the witness. The specifications themselves are the best evidence of what they include.

Mr. Hogan: These specifications are drawn, your

(Testimony of Raymond R. Ames.)

Honor, under this man's supervision. He is the best one and only one able to tell as to what was to be covered under those specifications.

Mr. Cline: What may have been in the mind of this one person in the M.S.T.S. Service is certainly not material and not binding on the contractor, unless so communicated to him. The document otherwise speaks for itself, it is a matter for the Court to determine. [67]

The Court: Will you read the last question?

(Record read by the reporter.)

The Court: Reframe your question.

Q. (By Mr. Hogan): Do you know why there were no class B items listed in those specifications?

Mr. Cline: The same objection, may it please the Court. The contractor cannot be bound by what was in the mind or the intent of some one individual connected with the M.S.T.S. service unless it is communicated to him. What was in his mind is purely a matter of opinion that couldn't be binding on this Court.

The Court: Are you familiar with this contract?

The Witness: Yes, sir.

The Court: What is the B contract, so-called?

The Witness: Category B item? That is an indefinite item, so-called indefinite item which we get a bid on, a separate bid for from the contractors when we are not certain whether we are going to do the work or not, and separate bid price.

The Court: There is none in this contract?

The Witness: None in this contract.



(Testimony of Raymond R. Ames.)

The Court: Proceed.

Q. (By Mr. Hogan): Now, those category A items that are listed there, what is contemplated by them?

Mr. Cline: Same objection, may it please the Court, [68] it is the opinion and conclusion of this witness what he may have had in his mind, is not binding upon the Court or the libelant.

The Court: We are limited to the contract, the contract will have to speak for itself.

Mr. Hogan: Very well, your Honor. Withdraw the question.

May I have Respondent's Exhibit B, (Libelant's Exhibit No. 2, Pre-trial Order.) a letter to Mr. Cline, November 14?

Q. I show you Respondent's Exhibit B, which is not in evidence, and in particular page two thereof, and the list of items that are contained therein which have been testified to be repairs made on these lifeboats. Are those category A items?

Mr. Cline: Objected to as calling for the opinion and conclusion of this witness.

The Court: If he knows he may answer. Objection overruled.

A. These are category A; these are part of the contract, yes.

Mr. Hogan: I think that is all.

(Testimony of Raymond R. Ames.)

Cross-Examination

By Mr. Cline:

Q. Mr. Ames, you've said that the contract, this contract was awarded to the Triple A Machine Shop, is that right?      A. Yes, sir. [69]

Q. The contract consisted, did it not, of the submission of a bid by Triple A?      A. Yes, sir.

Q. That was accepted by the Government?

A. Yes.

Q. And that was the contract, is that right?

A. That's right, this was the contract.

Q. Well, no, now——

Mr. Hogan: Your Honor, I object. Mr. Ames has testified that he did not let this contract, merely drew the specifications.

Mr. Cline: But over the objection this witness testified that this contract was let to Triple A and he said it embodied certain things. I am trying to find out what document he is talking about as the contract——

Mr. Hogan: I don't know whether——

Mr. Cline: There is only one contract, that is the master——

The Court: The contract he has in his mind there?

Mr. Cline: No, what he has in his mind is a set of specifications. This is not a contract, may it please the Court.

The Court: Where is the contract?

Mr. Cline: The contract is the bid here, this de-

(Testimony of Raymond R. Ames.)

pendant's exhibit or the Joint Exhibit 4, (Respondent's Exhibit No. 5, Pre-trial Order.) which is the bid of the Triple A Machine Shop, Incorporated. That is [70] the contract.

The Court: Total price \$3,775, repairs to five lifeboats. This is Joint Exhibit 4, is it?

The Witness: Yes, your Honor.

Mr. Cline: Yes, your Honor.

The Court: Counsel, do I understand this is the contract we are talking about and discussing here?

Mr. Hogan: No, your Honor, the specifications are part of the contract. You have the master ship repair contracts, you have the specifications. The specifications relate directly to the master ship repair contract. That is the bid submitted on the job. That is the bid. That is part of the contract.

The Court: Now, let's get ourselves together, those specifications, hand them to me.

Mr. Cline: Yes, your Honor.

The Court: Hand them to me, please. Is there another portion of this contract?

Mr. Hogan: Yes, your Honor.

The Court: What is it and where is it?

Mr. Cline: The master contract——

The Clerk: Here is one.

The Court: Is this the master contract?

Mr. Hogan: Here is the invitation to bid.

The Court: That isn't what I am talking about now.

Mr. Hogan: The master contract is right [71] here.

(Testimony of Raymond R. Ames.)

The Court: It is here in evidence?

Mr. Hogan: That is correct.

Mr. Cline: That's right.

The Court: Exhibit 1, Exhibit 4 and Exhibit A.  
All right, proceed.

Q. (By Mr. Cline): Now, Mr. Ames, you will refer to this Exhibit 4, (Respondent's Exhibit No. 5, Pre-trial Order.) and show me where on there there is a bid for anything other than the items involved in category A?

A. There are none.

Q. In other words, this bid expressly states—starts with a heading category A, repair five lifeboats, total \$3,775? A. That's right.

Q. And this bid for \$3,775 for category A was accepted by the Government, is that right?

A. By the contract section, yes.

Q. All right. Now, referring to the specifications that are referred to in this bid— A. Yes.

Q. —I will ask you to take these specifications and turn to the portion that is designated as category A? A. Page 4.

Q. Have you located it? A. Page 4.

Q. Page 4, and isn't it 4 and 5? [72]

A. Yes.

The Court: Will you be good enough to read it?

The Witness: Page four and five?

The Court: Yes, please.

The Witness: "Item 1—Repair Gas Driven Boat—43 Person:

"Open and examine gas engine (Gray Marine

(Testimony of Raymond R. Ames.)

Lugger Seascout 91, four cylinder, engine #D20387) and completely overhaul the engine and accessories. The contractor shall remove the head, disassemble the engine and examine all moving parts. The contractor shall examine valves, seats, springs and keepers, grind valves and seats or replace same if found to be beyond economical repair, clean and remove carbon. Examine cylinders, pistons, piston rings, rods, bearings, and machine, refit or replace parts found worn or defective, thoroughly clean entire cooling system, remove and overhaul carburetor and distributor, starter, generator, fuel pump and other accessories, replace all worn or defective parts, clean and test gasoline tank and fuel lines from engine to tank, renew all ignition wiring and starter button, check engine foundation, clean and paint same. Reassemble engine, renew gaskets, defective studs, bolts and nuts, install new spark plugs, examine suction and discharge piping and valves, examine exhaust piping and manifold, repair [73] and slant or renew as required to place in serviceable condition. Make all necessary adjustments and tune up engine. Contractor to furnish material, labor and equipment and test engine. Examine, repair and adjust clutch and make up coupling.

“Open up the bilge pump (hand operated), examine, clean, free up, repair as necessary, assemble, renew suction and discharge hoses and test.

“The contractor shall remove propeller and propeller shaft, check shaft for straightness, straighten

(Testimony of Raymond R. Ames.)

and polish as required, clean and examine propeller, fair in leading and trailing edges, examine and clean stern tube and stuffing box, reinstall propeller and shaft, repack stuffing box and test for operation.

"Item 2: Repair Four (4) Lifeboats—77 Person:

"Boats (hand propelled), serial numbers A-5375, A-5114, A-5095 and A-5160. Location: Row one. Spaces 6, 15 and 16. Row #4, space 11 respectively. Builder: Welin Davit and Boat Corporation.

"Boat number A-5375. Remove starboard side bilge plate amidships, straighten to its original shape and contour and reinstall (approximately 15 square feet). Remove indentations from portside to restore shell to its original shape and contour as when new (approximately six square feet). [74]

"Boat number A-5114 and A-5095. Remove indentations from port and starboard shell to restore to its original shape and contour as when new (approximate total damage both boats twenty square feet).

"Boat number A-5160. Remove portside of bilge plate amidships, straighten to its original shape and contour and reinstall, (approximately 15 square feet). Remove small indentation from starboard side to restore shell to its original shape and contour as when new.

"Remove, reshape and/or renew the port and starboard grab rails and securing brackets.

"Remove propellers and propeller shafts, check shafts for straightness, straighten and polish as

(Testimony of Raymond R. Ames.)

required, clean and examine propellers, fair in leading and trailing edges, examine and clean stern tube bearings and stuffing boxes, reinstall propellers and shafts, repack stuffing boxes and prove operable.

“Open up and examine transmission, gears, shafts and bearings, clean up and make minor repairs to put same in operable condition. Repairs to or replacements of damaged or missing parts shall be accomplished only on a newly authorized written field order. Reassemble transmissions and fill with proper lubricant. Examine and free up propelling mechanisms (hand operated) and associated fittings, free up, renew missing or [75] deteriorated pins, screws, bolts, nuts and propelling handles, lubricate, assemble and make operable.

“Open up bilge pumps (hand operated), examine, clean, free up, repair as necessary, assemble, renew suction and discharge hoses and test.”

Q. Now, you have read, have you, all of category A from the specifications?

A. I have read pages 4 and 5.

Q. That is right, you read entirely all of the document, did you, from the place where it is headed category A items, you read all of them thereon, did you?

A. That's right.

Q. And nowhere in there is—withdraw that.

And the categories you have just read covered by designation the five boats that are involved in this lawsuit, is that right?

A. Yes.

Q. And nowhere in that category A is there one of these items that you referred to and that are

(Testimony of Raymond R. Ames.)

referred to in this letter, Exhibit B, as being the items of extra work claimed by the Triple A?

A. Those items there are referred to in the other pages.

Q. But not category A, are they?

A. Not as so designated.

Q. That's right. [76]

Mr. Cline: That is all.

### Redirect Examination

By Mr. Hogan:

May I have the specifications, please?

Q. Where, in the specifications, are other items not listed in category A provided for, Mr. Ames?

A. They are listed on pages two and three, which are part of the specifications.

Q. Any particular provision in those specifications—

The Court: Gentlemen, we have got the reporter here, and we ought to give him a chance to get this down.

Mr. Hogan: Very well, your Honor.

The Court: Just please speak up. Will you read the last question, please?

(Record read.)

Mr. Cline: May I object to that, may it please the Court. The document itself is the best evidence.

The Court: I want to get a record here. You may answer.



(Testimony of Raymond R. Ames.)

Q. (By Mr. Hogan): Is there any other place in those specifications that category A items are covered other than in the detailed data that you have just read to the Court?

A. On pages 2 and 3.

Q. Is there any specific provision in there that would [77] cover those items? A. Yes.

Q. What is that?

Mr. Cline: Is this all subject to my objection, may it please the Court, as being the opinion and conclusion of the witness, and the document itself is the best evidence of what it provides.

The Court: I anticipate he is going to read from the document.

Mr. Hogan: Yes, I am asking him to read—

The Court: Overruled.

The Witness: The first paragraph, page 2:

“It is the intent of these specifications to provide for the complete repair and reconditioning, both mechanically and structurally, of five lifeboats, all as necessary to place the boats in first class operating condition and ready for use.

“The work shall include, but shall not be limited to, any detailed specifications which follow.”

Mr. Hogan: Thank you, Mr. Ames.

Any further questions?

(Testimony of Raymond R. Ames.)

Recross-Examination

Q. In other words, as you say it was the expressed intent that these boats would be put in proper condition? [78]

A. First class operating condition.

Q. But there is nothing in what you have read or any other part of the specifications that say that any extra work that may develop will be part of category A, is there?      A. Well—

Q. I think you can answer that yes or no, if you—

Mr. Hogan: I don't think he can.

Mr. Cline: Certainly he can.

The Court: I can't anticipate what he can or cannot do without examining the witness. Let him speak.

Mr. Cline: Will you read the question?

(Question read.)

A. No, there is no mention of category A.

Q. The only mention of category A is what you read a few moments ago in detail as to each boat, isn't that right? That is all they said in those specifications that had any designation of category A, isn't that right?      A. The—

Q. Is it or is it not?

The Court: Just a moment, let the witness answer.

The Witness: The first pages, 2 and 3 are, in my

(Testimony of Raymond R. Ames.)

consideration, category A, part of the job. They couldn't—

Q. (By Mr. Cline): Go ahead.

A. You couldn't strip the boats unless you had the first two pages, pages 2 and 3. [79]

Q. That's right. There is no question, Mr. Ames, as to a desire on your part to have the boats put in shape. But what I am asking you if it is not a fact that there is not one word in the specifications that says that if any extra work develops during the course of the job, that that will be part of category A?

A. No, there is no mention of that.

Mr. Cline: Thank you.

Mr. Hogan: That is all, Mr. Ames.

(Witness excused.)

Mr. Hogan: Mr. Griffin.

### WILLIAM H. GRIFFIN

called as a witness for the defendant, sworn.

The Court: What is your full name?

The Witness: William H. Griffin.

The Court: How do you spell your last name?

The Witness: G-r-i-f-f-i-n.

The Court: Where do you live, Mr. Griffin?

The Witness: I live at 891 Clara Drive, Palo Alto.

The Court: Your business or occupation?

The Witness: Shipbuilder.

The Court: Shipbuilder?

The Witness: Yes, sir.

(Testimony of William H. Griffin.)

The Court: Are you actively engaged in the business at [80] the present time?

The Witness: No, I am not.

The Court: When did you last engage in active business?

The Witness: I finished my last work with the Government the 17th of November.

The Court: Of this year?

The Witness: Yes, sir.

The Court: Proceed.

#### Direct Examination

By Mr. Hogan:

Q. You were employed by the Military Sea Transportation Service in October and November, 1950?      A. I was.

Q. Where?

A. At Headquarters, 33 Berry Street.

Q. San Francisco?      A. San Francisco.

Q. And in what capacity?

A. My title was marine inspector.

Q. What experience have you had as a marine inspector?      A. Pardon?

Q. What experience have you had as a marine inspector?

A. Oh, possibly 20 years, approximately, as an inspector, inspector service.

Q. And with respect to what type of [81] vessels?

A. All types of vessels, both commercial and Navy.

(Testimony of William H. Griffin.)

Q. Now, in October and November of 1950, were you assigned any duties in connection with inspecting the lifeboats undergoing repairs in the Triple A Machine Shop yard? A. Yes.

Q. Now, Mr. Griffin, I ask you to take a look at the specifications for repairs to five lifeboats, Joint Exhibit number 2. (Respondent's Exhibit No. 2, Pre-trial Order.) I believe they are, and ask you if those specifications refer to those five lifeboats that you were detailed to inspect at that time?

Mr. Cline: We will stipulate they do.

A. To the best of my knowledge, it is, yes.

Q. (By Mr. Hogan): Now, during the course of your inspection of those lifeboats were you in contact with the Coast Guard inspector?

A. Yes.

Q. Do you remember who he was?

A. Yes.

Q. And when you're inspecting those jobs do you work closely together with the Coast Guard?

A. Very definitely.

Q. Are you from time to time contacted by the owner of the yard? A. Yes.

Q. And you from time to time contact them relative to the [82] work, is that correct?

A. Yes.

Q. Did you at that time make any reports to your superiors in the Military Sea Transportation Service, relative to the progress of this work?

A. During the repairs?

Q. Yes. A. Oh, yes.

(Testimony of William H. Griffin.)

Q. Was there some issue raised during that period of time as between the owners relative to certain work that was done on the lifeboats?

A. Yes.

Q. Did they come to you with those matters?

A. Triple A Machine Shop?

Q. Yes. A. Yes, I went to them.

Q. You went to them? A. Yes.

Q. Now, I show you for identification a report which purports to be signed by W. H. Griffin, ask you if you can identify that document?

A. Yes, that is my own handwriting. May I read it?

Q. You wrote that in your own hand?

A. Yes.

Q. And that is your own report, your own document? [83]

A. This is a sort of a little note.

Q. That is yours? A. That is mine.

Mr. Hogan: Your Honor, I ask that this be admitted in evidence.

The Court: It is dated?

Mr. Hogan: It is undated.

The Court: When was this made?

The Witness: At the completion of the work.

The Court: Can you fix the time as near as you can?

The Witness: Approximately, oh, I would say it was, I think it was October sometime or November; first of November sometime.

The Court: That will be admitted and marked.

(Testimony of William H. Griffin.)

Q. (By Mr. Hogan): Now, if you will just hold that document, please, for a moment. What was the occasion of that report?

Mr. Cline: What number is that?

Mr. Hogan: That will be respondent's number C, is that right?

The Clerk: Respondent's Exhibit C admitted and filed in evidence.

(Whereupon the handwritten report referred to above was marked Respondent's Exhibit C in evidence.)

(Testimony of William H. Griffin.)

## RESPONDENT'S EXHIBIT C

The Triple "A" Machine Works, feels that the following items which have been replaced by the U. S. Coast Guard and myself—are not a part of contract, for the repairs of the 5 lifeboats, and should be accomplished on a field order. F. O. 9490.

Renew—146 Tanks, at \$65.00 each.....	\$9,590.00
Renew—All bands for securing tanks.....	200.00
Renew—12 shell plates and one shell double chafing plate .....	3,600.00
Renew—2 Sockets for Propelling units....	90.00
Renew—Inboard Margin Boards on 4 Life- boats (Rejected by MSTs).....	352.00
Renew—All floors on 4 lifeboats.....	1,000.00
Renew—2 thwarts—(MSTs).....	150.00

/s/ W. H. GRIFFIN,  
Inspector.

\$ 200
3,600
90
352
1,000
150
-----
\$5,392

[Endorsed]: Filed December 16, 1953.



(Testimony of William H. Griffin.)

The Court: What is the question?

Mr. Hogan: I asked him what was the occasion of that [84] report.

A. This is the customary procedure at the completion of all contracts. We submit these to our superiors.

Mr. Hogan: Why was the report made?

A. The report——

Q. What did it deal with?

A. It deals with the work they were asking for field orders on.

Q. Who was asking for field orders?

A. Triple A Machine.

Q. Were those items—there was some question in their mind as to whether repairs should be made?

Mr. Cline: Objected to as calling for the opinion and conclusion of the witness, some question in their mind.

A. I don't see how there could be, I don't see how they could doubt it insofar as they were instructed to accomplish them.

Q. What I mean, Mr. Griffin, is was there some question about those repairs, is that why they came to you?      A. Yes.

Q. Or you went to them?

A. No, they came to me, requested this work to be done as a——

The Court: Who came to you?

A. Triple A Machine. I don't know which man in particular, [85] could have been Mr. Blake, Mr. Engel, or it could have been somebody else.

(Testimony of William H. Griffin.)

The Court: All right, just a moment. Where would they come to?

A. At their plant, at the scene of the operations of the repairs.

The Court: And did you have a conversation with him?

A. Oh, yes.

The Court: What was the conversation?

A. Well, in general, they would feel——

The Court: "They" you say. You will have to identify them some way.

A. I don't know who it was.

The Court: All right to be honest.

A. I do not.

Q. (By Mr. Hogan): To the best of your recollection was it a representative from Triple A?

A. Certainly it was.

The Court: As a result of that conversation you wrote out this document, did you?

What is this document, please?

A. This is a summary, or a note that we, as an inspector, attach to the specifications that are given to us at the beginning of a job. When the job is completed we sign it off as completed, the day and date and submit anything on—— [86]

The Court: Did you submit this?

A. I did, to my superior, Mr. Willitts.

The Court: The people that did the job, are they familiar with this?

A. Yes, should be.

The Court: How should they be?

(Testimony of William H. Griffin.)

A. Well, because this work—they were instructed to accomplish it.

The Court: I will give up. Proceed.

A. Maybe that is not a clear explanation.

Mr. Hogan: Well——

The Court: It isn't that, but it cannot go in evidence unless the foundation is laid for this document and this writing.

A. Well, this is—was attached by myself. The heading of it, if I may read it——

The Court: Read it, subject to your motion to strike—read it, please.

A. “The Triple A Machine works feels that the following items which have been rejected by the U. S. Coast Guard and myself are not a part of contract for the repairs of the five lifeboats, and should be accomplished on a field order” and I enumerated the items.

The Court: Thank you.

A. To Mr. Willits. [87]

The Court: Who is Mr. Willits?

A. He was the head of the inspection service of the Military Sea Transportation.

The Court: Where is he?

A. Now he is still in the Military Sea Transportation.

The Court: Will he be available?

Mr. Hogan: I hadn't contemplated calling him, your Honor, thought I could establish this document through Mr. Griffin.

The Court: Not unless you connect it up in some

(Testimony of William H. Griffin.)

fashion. They are not bound in relation to any writing unless it is brought home to them in some manner. You have to establish that fact.

Mr. Hogan: Well, in view of the fact that Mr. Griffin prepared the document and has identified it, he certainly has expressed what it was written in connection with.

The Court: Yes.

Mr. Hogan: And that he was employed by Military Sea Transportation Service, made his report to the Military Sea Transportation Service.

The Court: Yes.

Mr. Hogan: And this is the document.

The Court: Yes.

Mr. Hogan: And it relates to the issue of certain repairs that were required on these lifeboats. [88]

The Court: Yes. Then what does it say?

Mr. Hogan: And he was the inspector at that time.

The Court: Yes.

Mr. Hogan: And he was the one that would have the most intimate knowledge of these particular—

The Court: No doubt about that, but what about the people that did the work, was that brought home to them? It has to be connected up before it can go in evidence.

Mr. Hogan: Well, I think we were just getting to that, I don't know.

The Court: Proceed.

Q. (By Mr. Hogan): Now, where did you

(Testimony of William H. Griffin.)

obtain the information in this report, do you recall?

Mr. Cline: May it please the Court, I would like to interpose an objection. On this whole matter Mr. Hogan and I spent considerable time working together and with the Court, Judge Goodman, in arriving at an agreement on a state of facts, which are embodied in a pre-trial order, and all this seems to be covered.

We agreed, and it is signed by the Court that, "During the months of October and November, 1950, libelant was required by Military Sea Transportation Service, Pacific, to perform additional work and furnish labor and materials to effect certain repairs to the said lifeboats." There is no dispute about it. [89]

Further: "That in October, 1950, Triple A Machine Shop, libelant herein, was required to perform the aforesaid additional work on the said five lifeboats and libelant was advised by the contracting officer, Military Sea Transportation Service, Pacific, that such additional work was covered under the specifications for repair, number MSTSP 51-64, job order number 10 and Master Ship Repair Contract MST-235. That libelant proceeded with said work under written protest and notice to the contracting officer that libelant would require payment of the reasonable value of said additional work."

Now, we have agreed to all that, no question that this work was done, that they were required to do it, that it was additional work, that is right in here,

(Testimony of William H. Griffin.)

have gone through that and approved by the Court.

The Court: Why——

Mr. Cline: I am saying I object to this, already covered by our pre-trial order.

The Court: If that be true there is nothing left to be done.

Mr. Hogan: Very well, your Honor. You may step down. Respondent rests.

Mr. Cline: And the libelant rests, your Honor.

The Court: What is it?

Mr. Cline: Libelant rests. [90]

The Court: Take a recess.

(Short recess.)

Mr. Cline: May it please the Court, I am not unmindful of the fact that we rested. I wonder if the Court would grant me the indulgence of asking a couple of questions on further cross-examination of the witness, Mr. Ames?

The Court: You may.

Mr. Cline: Mr. Ames, will you take the stand, please?

#### RAYMOND R. AMES

recalled for further cross-examination, having been previously sworn, testified further as follows:

#### Further Cross-Examination

By Mr. Cline:

Q. Mr. Ames, how did you define your particular—your title of your office?

A. Head planner and estimator.

(Testimony of Raymond R. Ames.)

Q. Yes, that's it. And you were such in October and November, 1950—September, 1950?

A. Yes.

Q. And there are a number of other planners, or planners under you in the office?

A. At that time there was approximately 15.

Q. 15. Now, was there—was it your province to go out on the job and inspect boats and so on?

A. No, sir. [91]

Q. Your work was in the office?

A. That's correct.

Q. You never did see these lifeboats at the time until after the work was undertaken, did you?

A. Never did see them, no.

Q. As a matter of fact, you didn't write the specifications that are introduced in evidence as Respondent's Exhibit A, (Respondent's Exhibit No. 2, Pre-trial Order.) did you?

A. I perused them, I did not write them.

Q. Then your testimony that you gave on direct examination that you wrote these specifications was not correct, was it?

Mr. Hogan: I object, your Honor. He didn't testify to that effect at all.

The Court: He may answer.

Mr. Hogan: The specifications were drawn under his supervision.

Mr. Cline: He said that he wrote, it was his intent when he wrote them on—

Mr. Hogan: He did not so testify.

Mr. Cline: I beg your pardon, your Honor—

(Testimony of Raymond R. Ames.)

Mr. Hogan: It is twisting——

The Court: Did you testify to that?

The Witness: Yes, sir.

The Court: That is sufficient for all purposes, if that be the fact. [92]

Q. (By Mr. Cline): These specifications were drawn by planner Dalzell, isn't that right?

A. That is correct, he is a planner and estimator, he worked for me.

Q. You never saw these plans or these specifications until after this controversy arose, did you?

A. I never saw the specifications?

Q. These particular specifications.

A. I perused those specifications before they were issued, that was my job.

Q. But they had already been prepared, is that right?

A. They had been written in longhand and I perused them and passed on them.

Mr. Cline: That is all.

#### Redirect Examination

By Mr. Hogan:

Q. You knew what was intended by those specifications, didn't you?      A. Yes, sir.

Q. That is part of your job, isn't that right?

A. That is correct.

Mr. Hogan: That is all.

Mr. Cline: The libelant rests.

Mr. Hogan: That is all.

(Witness excused.)



Certificate of Reporter

I (We), Official Reporter(s) pro tem, certify that the foregoing transcript of 93 pages is a true and correct transcript of the matter therein contained as reported by me (us) and thereafter reduced to typewriting, to the best of my (our) ability.

/s/ ELDON M. RUTH,

/s/ P. D. NORTON.

[Endorsed]: Filed May 16, 1954. [93]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON  
APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys herein:

Libel.

Answer.

Request for admission of facts and genuineness of documents under Rule 32B, Supreme Court Admiralty Rules.

Admission of genuineness of documents.

Motion to dismiss.

Pre-trial Order.

Request for admission of genuineness of documents under Rule 32B, Supreme Court Admiralty Rules.

Admission of genuineness of documents.

Order reserving ruling on motion to dismiss.

Stipulation re value of materials and labor.

Order for entry of judgment.

Final decree.

Findings of fact and conclusions of law.

Notice of motion to amend findings of fact, pursuant to rule 52(b).

Notice of motion for new trial, pursuant to Rule 59.

Motion to modify decree.

Order denying motions for new trial and to amend findings.

Modified final decree.

Notice of appeal.

Statement of points appellant intends to rely upon on appeal.

Cost bond on appeal.

Designation of documents to be contained in the record on appeal.

Respondent's supplemental designation of record on appeal.

Reporter's transcript, Dec. 16, 1953, of opening statements.

Reporter's transcript, Dec. 16, 1953, of trial.

Joint exhibits 1 and 2 attached to answer.

Joint exhibit 3 attached to request for admission of facts.



In the United States Court of Appeals for the  
Ninth Circuit

In Admiralty No. 14389

TRIPLE "A" MACHINE SHOP, INC.,

Libelant and Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent and Appellee.

NOTICE TO CLERK RE APPELLANT'S  
POINTS ON APPEAL

To the Clerk of the Court above named:

You are hereby respectfully informed that the appellant above named relies and bases its appeal upon the same points set forth in its "Statement of Points Appellant Intends to Rely Upon on Appeal" filed in the above-entitled action in the United States District Court on May 7, 1954, and the same may be used as appellant's points on appeal herein.

Dated: June 17, 1954.

/s/ J. THADDEUS CLINE,  
Proctor for Appellant.

Receipt of Copy acknowledged.

[Endorsed]: Filed June 17, 1954.